

EXHIBIT A

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1 STIPULATIONS

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3 It is hereby stipulated and agreed between the
4 parties to this action, through their respective
5 counsel of record:

6 1. That the deposition of the Thomas Hofeller,
7 Ph.D., may be taken on June 28, 2012, at 9:30 a.m. in
8 Raleigh, NC, before Denise Myers, CSR 8340, RPR.

9 2. That the deposition shall be taken and used
10 as permitted by the applicable North Carolina Rules
11 of Civil Procedure.

12 3. That any objections of any party hereto as to
13 notice of the taking of said deposition or as to the
14 time or place thereof, or as to the competency of the
15 person before whom the same shall be taken, are
16 deemed to have been met.

17 4. That objections to questions and motions to
18 strike answers need not be made during the taking of
19 this deposition, but may be made for the first time
20 during the progress of the trial of this case, or at
21 any pretrial hearing held before any judge of
22 competent jurisdiction for the purpose of ruling
23 thereon, or any other hearing at which said
24 deposition shall be used, except that objections to
25 the form of the question must be made at the time

1 such question is asked or objection as to the form of
2 the question is waived.

3 5. That the witness reserves the right to read and
4 sign the transcript prior to it being sealed.

5 6. That the sealed original of the transcript shall
6 be mailed First Class Postage Paid or hand-delivered
7 to the party taking the deposition for preservation
8 and delivery to the Court if and when necessary.

1 THOMAS HOFELLER, Ph.D.,
2 having been first affirmed by the Certified Shorthand
3 Reporter and Notary Public to tell the truth, the whole
4 truth and nothing but the truth, testified as follows:

5 EXAMINATION

6 BY MS. EARLS:

7 Q. Good morning, Dr. Hofeller. As we introduced
8 ourselves before the deposition, my name is Anita
9 Earls. I represent the NAACP, several other
10 organizations and a large number of citizens in
11 North Carolina who have filed suit challenging the
12 legislative and Congressional redistricting maps.

13 Would you state your name for the record,
14 please.

15 A. Thomas Brooks Hofeller.

16 Q. And, Dr. Hofeller, you've been deposed before, I
17 take it.

18 A. Yes.

19 Q. Can you give me a rough estimate of how many times
20 you've had your deposition taken.

21 A. Probably 10 or 12 times.

22 Q. And how many times have you testified in court?

23 A. About the same. I would say, 10 or 12 times. It's
24 all on my resume.

25 Q. I ask mainly to clarify that you know it's

1 important to speak your answers, not nod your head,
2 I take it.

3 A. Yes.

4 Q. And will you please let me know if you don't
5 understand my question?

6 A. I will.

7 Q. And also I would ask that you allow me to finish my
8 question before you start your answer so that the
9 court reporter can get down what both of us are
10 saying.

11 A. I will.

12 Q. And finally, I'm going to ask you if there's a
13 document that you're aware of that would assist you
14 in answering a question I have, would you please
15 let me know what it is?

16 A. I will.

17 Q. We have with us today in electronic form all of the
18 documents that have been produced in this case in
19 response to the subpoena that was issued as well as
20 discovery requests, so I may either have it in
21 paper form or electronically, but we will be sure
22 to try to find any documents that would be useful
23 in getting answers to the questions we have.

24 I want to start --

25 (Brief interruption.)

1 BY MS. EARLS:

2 Q. I finally should be clear that if you need to take
3 a break, please let me know.

4 A. Thank you.

5 Q. As you alluded to earlier, your resume has already
6 been produced as an exhibit to an affidavit that
7 was filed in this matter, so I won't belabor it but
8 I would like to briefly go through your background.

9 As I understand it, your academic
10 background is that you graduated with a Bachelor of
11 Arts degree in 1970 from Claremont McKenna College;
12 is that right?

13 A. Yes. It was actually then Claremont Men's College,
14 but it's since then changed its name.

15 Q. In 1980 you received a Ph.D. in Government from
16 Claremont Graduate University?

17 A. I did.

18 Q. Am I right that you've never been a tenured member
19 of a university faculty?

20 A. Yes.

21 Q. And is it also true that you've never been the sole
22 author of an article published in a referred
23 journal?

24 A. Yes.

25 Q. And you don't have a law degree?

1 A. No.

2 Q. I want to talk a little bit about your employment.

3 From your resume it appears that currently
4 you have three employments, that you are partner
5 with Geographic Strategies, LLC, and you've had
6 that since May 2011 to present; is that correct?

7 A. Yes.

8 Q. And can you tell us briefly what Geographic
9 Strategies is?

10 A. It's an LLC, as is stated, and it assists clients
11 in redistricting work and helps them with
12 redistricting plans and legal work.

13 Q. And are there other partners in Geographic
14 Strategies?

15 A. Yes.

16 Q. How many partners do you have?

17 A. Two others besides myself.

18 Q. Then you are also redistricting consultant to the
19 State Government Leadership Foundation and you've
20 had that role since April of 2011 to the present;
21 is that correct?

22 A. Geographic Strategies has been retained by that
23 organization, and that contract expired at the end
24 of March of this year.

25 Q. And what is the State Government Leadership

1 Foundation?

2 A. It's associated with the Republican State -- RSLC,
3 the Republican State Leadership Group.

4 Q. And then you're also redistricting consultant to
5 the Republican National Committee and you've had
6 that role from May 1999 to the present; is that
7 correct?

8 A. Yes, although first I was a direct consultant to
9 the Republican National Committee. Now it's a
10 contract with Geographic Strategies.

11 Q. So both of your redistricting consultant positions
12 are through contracts that those organizations have
13 with Geographic Strategies?

14 A. Yes.

15 Q. How long has Geographic Strategies, LLC, been in
16 existence?

17 A. Since, I believe, May of 2011.

18 Q. So your prior consulting work with State Government
19 Leadership Foundation and the Republican National
20 Committee, was that in an individual capacity?

21 A. Our contract with the State Leadership Group was
22 always, I believe, through the LLC. That's my
23 recollection.

24 Q. Did the LLC exist in a different name?

25 A. No.

1 Q. So I'm just trying to understand. If you've been
2 the redistricting consultant to the Republican
3 National Committee since May of 1999 and Geographic
4 Strategies has existed since May of 2011, it's kind
5 of a long period in there.

6 A. I think the association with the RSLC is newer than
7 that with the RNC.

8 Q. My question is: Prior to the formation of
9 Geographic Strategies in May 2011, was your
10 redistricting consultant work with the Republican
11 National Committee done in your individual
12 capacity, that is, they contracted with you, or was
13 there some other entity that you were involved
14 with?

15 A. I'm sorry, you said the Republican National
16 Committee?

17 Q. Yes.

18 A. Yes, I was contracted with directly. I'm sorry, I
19 misunderstood your question.

20 Q. And again, as I said, your resume is an exhibit,
21 but I did want to ask you specifically about your
22 prior employment as staff director at the U.S.
23 House Subcommittee on the Census. And it indicates
24 you had that role from February 1998 to July 1999.

25 A. I did.

1 Q. And when you were the staff director, did you work
2 with Dr. Brunell?
3 A. I did.
4 Q. And did you work with Joel Raupe?
5 A. No.
6 Q. What about Mr. Morgan, John Morgan?
7 A. In my role in that committee?
8 Q. Yes.
9 A. No.
10 Q. But did you know him at that time?
11 A. Oh, yes.
12 Q. And were you working with him in other capacities?
13 A. I don't really understand what you mean by "work
14 with." He was a person who did redistricting work
15 and I have known him for a number of years. We've
16 never worked together specifically on a project.
17 Q. And did you also work with Dale Oldham when you
18 were staff director at the U.S. House Subcommittee
19 on the Census?
20 A. No.
21 Q. But did you know him at that time?
22 A. Yes.
23 Q. And had you worked with him on other projects?
24 A. Yes.
25 Q. What other projects did you work with Dale Oldham

1 on?

2 A. Dale was redistricting counsel for the Republican
3 National Committee in the last redistricting cycle
4 and I worked with him in that cycle.

5 Q. I do want to talk a little bit about your
6 experience with redistricting.

7 As I understand it from your resume, your
8 earliest experience was -- began in 1970 when you
9 developed the first computerized geographic mapping
10 and data retrieval system used by the California
11 State Assembly; is that right?

12 A. Well, that's what's on my resume. I actually did a
13 little bit of work for -- not for pay but with
14 building a very rudimentary database for
15 redistricting in California in the mid '60s as
16 California was trying to cope with the one-person,
17 one-vote rule and had to do a mid decade
18 redistricting.

19 Q. While it was not for pay, in what capacity were you
20 working on developing the database for
21 redistricting in the mid '60s?

22 A. Essentially matching census geography with
23 political geography.

24 Q. Were you doing that -- who did you do that work
25 for? You may have just said.

1 A. Well, I worked with my brother-in-law, actually,
2 and he was working with State Senator -- or maybe
3 Assemblyman at that point -- Jim Mills was
4 Democratic Chairman, I believe, of the
5 Redistricting Committee, so it's been a long time
6 ago. I don't remember what all the connections
7 were.

8 Q. Sure. Did you have any -- can you just briefly
9 describe what your role was in the 1970 round of
10 redistricting or the round of redistricting that
11 followed the 1970 Census?

12 A. Again, as you stated, we developed a set of
13 software to assist redistricting, which by today's
14 terms is pretty rudimentary, but it was really kind
15 of advanced for that time, and people were able to
16 digitize boundaries of prospective districts and
17 get statistics out of the computer as to what the
18 districts were.

19 Q. Was it used anywhere other than California?

20 A. No.

21 Q. Then were you involved in redistricting following
22 the 1980 Census?

23 A. Yes.

24 Q. What did you do in that round of redistricting?

25 A. Can I go back to my previous answer?

1 Q. Please.

2 A. Okay. We also drew maps, too.

3 Q. Okay.

4 A. Again, I was involved with the development of a
5 more advanced redistricting system, and again, the
6 combination of demographic data and election
7 history data, registration data to load into the
8 system -- again, another GIS system -- and assisted
9 in drawing maps in court cases, et cetera.

10 Q. So following the 1980 Census and that round, in
11 that round of redistricting you were involved as an
12 expert witness in litigation; is that correct?

13 A. Well, actually, I was an expert -- I'm sorry. An
14 expert witness, yes.

15 Q. And the Summary of Participation in Lawsuits that's
16 in your resume, is that a complete list or sort of
17 the highlights of the cases you've been involved
18 in?

19 A. There may have been some more cases this year and
20 last year, but up until then it was complete.

21 Q. It's a complete list. Thank you.

22 And then following the 1990 Census,
23 generally what was your involvement in
24 redistricting?

25 A. I was retained by the Republican National Committee

1 in a role similar to the role that I performed as a
2 consultant in this redistricting cycle, which was
3 to assist in -- I'm sorry, '90, you said '90?

4 Q. We're done with 1980.

5 A. Right. 1990 I was actually working for the
6 National Republican Congressional Committee and,
7 again, there assisting particularly members of
8 Congress, getting them educated about
9 redistricting, which only occurs every ten years,
10 and developing software -- actually, not developing
11 but guiding the development of software for
12 redistricting, aiding them in drawing plans and any
13 other redistricting needs that they had.

14 Q. Then I did look carefully through your list of
15 lawsuits and I could not find -- it doesn't appear
16 to me that you were an expert witness in any
17 litigation in the 2000 round of redistricting. Is
18 that right or have I missed something? And I'm
19 happy to show you the resume.

20 A. I can't remember anything right now that may have
21 happened, but I don't remember.

22 Q. So what was your role in the post 2000 round Census
23 in redistricting?

24 A. In 2000?

25 Q. Yes.

1 A. Then I was back at the Republican National
2 Committee, and we had an extensive program of
3 representation, both technical, legal, demographic,
4 and really all aspects of redistricting, held
5 seminars, trained people, assisted GOP stakeholders
6 in states when they needed help and assistance and
7 really represented the national party in that
8 process.

9 Q. Is there a reason why you weren't involved as an
10 expert witness in litigation following the 2000
11 Census?

12 A. No.

13 Q. Then I'd like to get more clarity on what
14 litigation you've been involved in in this round of
15 redistricting following the 2010 Census. And your
16 resume does list two cases. It lists the Boone
17 versus Nassau County Legislature, New York case,
18 and then the case in Texas, Petteway versus Henry.

19 Are there other cases in litigation where
20 you have participated as an expert other than the
21 North Carolina --

22 A. You mean testified or by affidavit?

23 Q. Either way, just any case other than the
24 North Carolina case which we'll get to in a minute.

25 A. There was a case in Nueces County in Texas.

1 Did you mention the Missouri case?

2 Q. No.

3 So let's start with the Texas case. What
4 was your role in that case?

5 A. There were actually two Texas cases, one in
6 Galveston and one in Nueces county.

7 Q. And the Petteway verse Henry, that's the Galveston
8 case?

9 A. I assume so, yes.

10 Q. Because on your resume you explain that you
11 prepared an alternative redistricting plan in that
12 case.

13 What did you do in the Nueces County?

14 A. The same function.

15 Q. And who were you retained by in the Nueces County
16 case?

17 A. Defendant intervenors. I don't actually recall who
18 specifically. I'm sorry.

19 Q. Then you mentioned a Missouri case.

20 A. Yes. There were, again, defendant intervenors, and
21 I testified as an expert witness and prepared some
22 sample maps -- although I don't believe they were
23 entered -- and testified on compactness.

24 Q. And were you involved in both the Missouri case
25 dealing with the Congressional redistricting and

1 the Missouri case dealing with legislative
2 redistricting?

3 A. The House, the House specifically.

4 Q. So you were involved --

5 A. The Senate went down a different legal path than
6 the House and I put in an affidavit.

7 Q. In the House case?

8 A. Yes.

9 Q. But did you also -- wasn't there also -- were you
10 also involved in a case dealing with Congressional?

11 A. I was involved in the Congressional case. That's
12 where I testified in court.

13 Q. Any other litigation experience this round of
14 redistricting?

15 A. I've just recently submitted an affidavit in an
16 Arizona case, plaintiffs have filed against the
17 legislative map --

18 Q. And who is --

19 A. -- and the Congressional map.

20 Q. And who's retained you in that case?

21 A. I'm sorry?

22 Q. Who's retained you in the Arizona case?

23 A. Again, plaintiff intervenors. Plaintiff
24 intervenors.

25 And also I just recently put in an

1 affidavit on a Maryland case.

2 Q. In the Arizona case, do you recall the name of the
3 case?

4 A. No, I don't. I'm sorry.

5 Q. In the Maryland case, who retained you in that
6 case?

7 A. Plaintiffs, I believe.

8 Q. And what work have you done in the Maryland case?

9 A. I did analysis of the splits of counties and I did
10 an analysis of compactness.

11 Q. Do you know if that case is in Federal or State
12 Court?

13 A. It's in Federal Court. No, I'm sorry. It's in the
14 State Court, I believe, actually.

15 Q. Do you recall the attorneys who retained you in
16 that case?

17 A. Jason Torchinsky.

18 Do you need that spelling?

19 Q. If you know the spelling.

20 A. T-O-R-C-H-I-N-S-K-I, I think.

21 Q. Any other litigation post 2010 Census that you've
22 been involved in?

23 A. Again, not that I can recall right now.

24 Q. Do you recall being involved in a case in
25 Mississippi following the 2010 Census?

1 A. No, actually, I don't.

2 Q. Other than -- I'm sorry. Let me go back to
3 Mississippi for just a minute.

4 Mississippi State Conference of the NAACP
5 versus Haley Barbour, does that refresh your
6 recollection?

7 A. If you have a document there, it probably would be
8 best to --

9 Q. To show it to you.

10 (WHEREUPON, Exhibit 429 was marked for
11 identification.)

12 BY MS. EARLS:

13 Q. You've been handed an exhibit marked 429, and this
14 is a declaration. Am I correct that this is a
15 declaration that you prepared and that was filed in
16 a case in Mississippi?

17 A. Yes. I'm sorry.

18 Q. That's all right.

19 Does this refresh your recollection?

20 A. Yes.

21 Q. And do you recall who retained you in this case? I
22 don't think it actually says that in the document
23 that we have.

24 A. Well, it was the defendants. I don't really recall
25 exactly who it was.

1 Q. I may have questions about that later so hold onto
2 it.

3 A. Okay.

4 Q. Any other cases that you have been involved in in
5 the post 2010 Census round of redistricting?

6 A. Again, not that I can recall.

7 Q. Other than being retained to testify in various
8 litigation around the country, can you describe
9 generally the other work that you've done around
10 redistricting following the 2010 Census?

11 A. We've been particularly involved with various state
12 efforts in looking at maps, devising maps and
13 giving advice to stakeholders on the process,
14 giving technical assistance on the process.

15 Q. When you say "we," are you referring to Geographic
16 Strategies, LLC?

17 A. Well, yes, both in that role and before that role
18 and in my capacity as the consultant to the
19 Republican National Committee.

20 Q. And you described how you have been giving advice.
21 Generally, who is it that you're working with in
22 the various states in providing that advice and
23 technical assistance?

24 A. I'm sorry, I don't think that question is -- who?
25 In what respect?

1 Q. State legislators, Republican Party officials, who
2 is it that you're working with?

3 A. We have worked with all of the people who are
4 involved in the process and around the process,
5 attorneys, legislators, commission members, state
6 parties, in some cases other outside interested
7 people.

8 Q. In the post 2010 round of redistricting, you've
9 been the redistricting consultant to the Republican
10 National Committee. Is it correct that you have
11 not provided any advice to any Democratic state
12 party?

13 A. No. Yes, it's correct that I haven't. I'm sorry.

14 Q. So let me turn to the work that you've done in
15 North Carolina.

16 And it's clear that in North Carolina you
17 were involved -- you were involved in drafting the
18 plans that were ultimately enacted; is that
19 correct?

20 A. Yes.

21 Q. And you also have been designated as an expert
22 witness in this litigation?

23 A. Yes.

24 Q. In any of the other cases that you've been involved
25 in -- and I'll start with just this round of

1 redistricting since the 2010 Census -- did you
2 similarly have that kind of role? And
3 specifically, I mean were you drawing plans for a
4 legislature that were enacted and at the same time
5 serving as an expert witness in litigation?

6 A. In one case which you did not mention, which was
7 the Mississippi case, Connor v Finch in 1977, '78,
8 I actually served as an expert and a fact witness,
9 although that was my first time testifying in
10 court, my ability to render opinions on the case
11 was challenged by the plaintiffs and the judges
12 allowed that I was just as qualified as anybody
13 else to give those opinions so I guess that would
14 be counted as expert testimony.

15 Q. In any case other than that case have you served in
16 that dual role as a fact witness and expert
17 witness?

18 A. Not specifically, no.

19 Q. Now, you were -- I'm correct that you were involved
20 in North Carolina in the 1990 round of
21 redistricting. Were you involved in redistricting
22 in North Carolina prior to 1990?

23 A. Yes.

24 Q. What did you do in North Carolina prior to 1990?

25 A. I was retained by the State and testified in

1 Gingles.

2 Q. And that was in the 1980 round of redistricting?

3 A. Yes.

4 Q. Prior to 1980, were you involved in North Carolina?

5 A. No.

6 Q. Other than the testimony that you gave in the
7 Gingles case, did you have any other involvement in
8 North Carolina in the 1980s?

9 A. I'm sorry. In the 19 --

10 Q. '80s.

11 A. '80s, not that I remember.

12 Q. What did you do in the 1990s round of redistricting
13 in North Carolina?

14 A. I testified in Shaw and, of course, throughout that
15 round also compiled databases and devised
16 redistricting plans, advised the plaintiffs.

17 (Brief interruption.)

18 BY MS. EARLS:

19 Q. Many of us in the room know this, but just for the
20 record, who retained you in the Shaw litigation?

21 A. The plaintiffs.

22 Q. And in that case there were plaintiffs and
23 plaintiff intervenors?

24 A. Right. Robinson Everett, I believe, Judge Everett.

25 Q. Other than your involvement as an expert in the

1 Shaw versus Reno, then Shaw versus Hunt litigation
2 in North Carolina, were you -- did you have any
3 other involvement in redistricting in
4 North Carolina in the 1990s?

5 A. Again, not that I can recall. Sometimes it merges.

6 Q. I'm trying to keep us straight by decade.

7 A. Right. There have been a lot of decades.

8 Q. I appreciate that.

9 For the post 2000 round of redistricting,
10 did you have any involvement in statewide
11 redistricting in North Carolina?

12 A. Yes.

13 Q. What was your involvement?

14 A. Again, in associating -- in assisting GOP
15 stakeholders in their activities in the state and
16 also in involvement in Strickland.

17 Q. Did you draw any redistricting maps for
18 North Carolina in the post 2000 round of
19 redistricting?

20 A. Do you mean specifically for the State of
21 North Carolina or just for North Carolina in
22 general?

23 Q. So you've explained that you were advising GOP
24 stakeholders --

25 A. Yes.

1 Q. -- in the 2000 round of redistricting.

2 A. I did draw statewide maps in that capacity.

3 Q. And what work did you do in connection with the
4 Stephenson litigation?

5 A. Again, I assisted in the preparation of maps for
6 court purposes.

7 Q. Did you testify in that case?

8 A. Let's see. That was 2000. I don't recall,
9 actually. I'm sorry.

10 Q. Do you recall in preparing the maps that you
11 prepared in connection with the Stephenson
12 litigation what the focus of your analysis was?

13 A. It was very similar to this round in looking at the
14 relationship between counties and the Voting Rights
15 Act.

16 Q. Were you looking at Congressional districts as well
17 as state legislative districts?

18 A. Not really to any great extent that I remember.

19 Q. Then in this round of redistricting following the
20 2010 Census you've been described by various people
21 we've deposed as being the principal architect or
22 the principal map drawer.

23 Is that a fair description of your role in
24 North Carolina?

25 A. I have no problem with that description.

1 Q. Do you recall when you were first retained to be
2 involved in redistricting in North Carolina
3 following the 2010 Census?

4 A. Again, what do you mean specifically by "retained"?

5 Q. Well, maybe I should back up and say in what
6 capacity have you been involved in the 2010 round
7 of redistricting in North Carolina?

8 A. That's a very long answer. The first involvement
9 was in assisting the chairman of the Redistricting
10 Committees and assisting the state staff in
11 bringing together a database for use on the state
12 system and also for public distribution.

13 That was the first phase because we were
14 all waiting for the Census data, and you have to
15 merge the Census data and the election history and
16 registration data together in one database so that
17 it can be properly used in GIS systems which are
18 used to draw maps. So there was that.

19 There was also discussion about criteria
20 and how that would be -- how the plan would be
21 architected, I guess if you were going to use the
22 description architecture, and then acted in
23 actually drawing districts in plans and acted as
24 kind of a manager, gatekeeper of the technical
25 aspects of the redistricting processes. The

1 chairmen were trying to bring the plans to
2 completion and work them through the legislative
3 process.

4 Q. And then just to finish the different stages of
5 your involvement, at some point, then, you were
6 also retained to provide expert testimony in this
7 litigation?

8 A. Yes.

9 Q. So let me go back to the first capacity and that is
10 assisting the chair. Was --

11 A. Chairs.

12 Q. Chairs. Who specifically are you referring to?

13 A. Senator Rucho and David --

14 Q. Lewis?

15 A. Lewis, yes, David Lewis. I had known David Lewis
16 prior to that, too.

17 Q. And who retained you to provide that assistance to
18 Senator Rucho and Representative Lewis?

19 A. Well, they did through counsel.

20 Q. And that's through Mr. Farr?

21 A. Yes.

22 Q. And then -- well, let me -- I do want to ask you
23 one thing about that.

24 (WHEREUPON, Exhibit 430 was marked for
25 identification.)

1 BY MS. EARLS:

2 Q. I'm handing you a document that's been marked as
3 Exhibit 430. This was among the documents that
4 were produced to us. Do you recognize this?

5 A. I do.

6 Q. And can you tell us what it is?

7 A. I think it speaks for itself. It's a letter to
8 legislative leaders introducing our relationship
9 with the SGLF and also saying that those resources
10 were available to them if they so wished.

11 Q. And so when you say "we" --

12 A. Well, that -- I'm sorry. I'm interrupting your
13 question.

14 Q. -- you're referring to the State Government
15 Leadership Foundation?

16 A. Excuse me for a minute.

17 (Discussion held off the record.)

18 MR. FARR: Adam, I apologize for my bad
19 manners. This is Adam Hofeller. This is Adam
20 Stein who is counsel with Anita for the NAACP
21 plaintiffs.

22 THE WITNESS: Good morning.

23 MR. STEIN: Good morning. We met 20 some
24 odd years ago and I was the questioner.

25 THE WITNESS: Okay.

1 MR. STEIN: And I just got to spend an
2 hour and 45 minutes on I40. Excuse me for being
3 late.

4 MS. EARLS: I apologize. I get so caught
5 up.

6 BY MS. EARLS:

7 Q. So I was asking you about this Exhibit 430 and
8 wanting to know if this -- if this document comes
9 from the State Government Leadership Foundation.

10 A. My recollection is your question was what I meant
11 by "we."

12 Q. Okay.

13 A. Is that true?

14 Q. Yes, we can start with that one.

15 A. Well, Dale Oldham and myself and a person named
16 Mike Wild were the three people who were involved
17 in that work.

18 Q. And when you say "in that work," what do you mean?

19 A. In advising both the SGLC -- SGLF and anybody who
20 wished to ask for assistance in their redistricting
21 efforts on their process.

22 Q. So this mentions the RSLC. And what does that
23 stand for?

24 A. Republican State Leadership Council.

25 Q. Do you know who this letter went to?

1 A. Specifically, no.

2 Q. In general how it was distributed.

3 A. I think it went to the people whom it was
4 addressed, legislative leaders. Whether or not
5 they had a more extensive mailing list, I don't
6 know.

7 Q. Do you know if it went to the legislative leaders
8 in North Carolina that you worked with, that is,
9 the Chairs Senator Rucho and Representative Lewis?

10 A. As a fact?

11 Q. Well, first, yes.

12 A. No, I don't know as a fact.

13 Q. Is it possible that they are among the group of
14 legislative leaders that this went out to?

15 A. Yes.

16 MR. FARR: Dr. Hofeller, try to let her
17 finish her questions.

18 THE WITNESS: Yes.

19 BY MS. EARLS:

20 Q. I was going through the various capacities that you
21 were retained to work in North Carolina, and am I
22 correct that in each of these capacities, that is,
23 assisting the chair and the state staff and
24 compiling the database prior to the Census data
25 being released, working on the criteria and sort of

1 the architecture of the plans, drawing the
2 districts in the plans, managing the process and
3 then being retained as an expert witness, in each
4 capacity were you retained by Senator Rucho and
5 Representative Lewis through their counsel Tom
6 Farr?

7 A. Yes.

8 Q. Do you remember when you were first contacted to do
9 this entire body of work?

10 A. Actually, discussions about North Carolina
11 redistricting started in earnest shortly after the
12 2010 election and have worked from there.

13 Q. When you say discussions, do you mean your
14 discussions with Senator Rucho and Representative
15 Lewis?

16 A. I did speak with them during that period. I don't
17 know specifically the dates.

18 Q. So we're talking roughly November, December 2010?

19 A. November, December, January and then more
20 extensively thereafter.

21 (WHEREUPON, Exhibit 431 was marked for
22 identification.)

23 BY MS. EARLS:

24 Q. You're being handed an exhibit that's marked 431.

25 This is an e-mail that was sent to me and Mr. Speas

1 from Tom Farr and it includes an e-mail from you to
2 Mr. Farr with the -- am I correct this is your best
3 reconstruction based on expense reports of the time
4 that you spent in North Carolina in 2011?

5 A. Yes.

6 Q. And to the best of your recollection now, this is a
7 fairly complete listing of the dates that you were
8 in North Carolina?

9 A. Yes.

10 Q. Did you -- when you came to North Carolina, was all
11 of your work done in Raleigh?

12 A. Yes.

13 Q. Did you -- on any of these occasions on this
14 Exhibit 431 did you travel to any other part of the
15 state?

16 A. No.

17 Q. And where in Raleigh did you do your work?

18 A. I worked at least on these dates both at the
19 legislative office building and at the Republican
20 Party headquarters in Raleigh.

21 Q. Did you attend any of the public hearings that were
22 held on redistricting in 2011 in North Carolina?

23 A. No.

24 Q. Did you review the transcripts of those hearings at
25 any point?

1 A. No.

2 Q. Did you attend any of the Redistricting Committee
3 hearings?

4 A. No. I may have briefly looked in on one, but I
5 wouldn't have considered it attending because I
6 didn't hear what was going on.

7 Q. Did you review any of the transcripts of the
8 Redistricting Committee hearings or any notes of
9 those hearings?

10 A. No.

11 Q. You previously testified that for all four of these
12 phases you've been retained by Representative Lewis
13 and Chairman Senator Rucho. Who's paid you for
14 this work?

15 A. I received a check from Ogletree which to the best
16 of my knowledge came from the state government.

17 Q. Have you been paid by the RNC for any of this work
18 that you've done in North Carolina?

19 A. No.

20 (WHEREUPON, Exhibit 432 was marked for
21 identification.)

22 BY MS. EARLS:

23 Q. You've been handed an exhibit marked 432, and this
24 is several pages of invoices on your letterhead.

25 Am I correct that these are the invoices

1 for work that you've done in North Carolina?

2 A. They are.

3 Q. I note that the first invoice -- attached here in
4 date -- well, that's not correct. There's a
5 January 27th invoice. It's dated January 27th
6 but -- the last page. If you could look at the
7 last page of Exhibit 432. The date of the invoice
8 is January 27, 2011, but then the description is
9 for services from December 1, 2011, to January 31,
10 2012.

11 Am I correct that this is in fact an
12 invoice that should have been dated January 27,
13 2012?

14 A. Yes.

15 Q. So if that's right, then these are attached in date
16 order. And the first invoice we have is August 9,
17 2011.

18 A. Yes.

19 Q. And it states that this is an invoice for work
20 beginning April 1st, 2011.

21 My question is: Is there an invoice for
22 work that was done any time between November 2010
23 and April 1st, 2011?

24 A. No.

25 Q. And if we look back at Exhibit 431, your first trip

1 to North Carolina would have been in -- what's the
2 date there of the first trip to North Carolina?

3 A. The date?

4 Q. Yes.

5 A. On the exhibit is February 1st through
6 February 2nd.

7 Q. Were you compensated for the time that you spent in
8 North Carolina February 1st to February 2nd?

9 A. No.

10 Q. So you were not compensated by Ogletree Deakins for
11 any work done prior to April 1st, 2011?

12 MR. FARR: Objection to form.

13 BY MS. EARLS:

14 Q. You can answer.

15 A. The work that I did that was on the first invoice
16 was essentially a flat fee for those services that
17 were rendered on the dates mentioned by the
18 invoice.

19 I'm sorry, ask your question again so I can
20 give you a yes-or-no answer.

21 Q. Were you compensated by anyone for the work that
22 you did in North Carolina prior to April 1st, 2011?

23 A. No.

24 Q. Each of these invoices in Exhibit 432 have a
25 statement that sets out the rates that you charge

1 for litigation preparation and court testimony.

2 Am I understanding you right that the first
3 invoice, the August 9th invoice, was a flat fee so
4 you weren't charging these hourly rates?

5 A. Correct.

6 Q. Then the next invoice, August 31st, are you
7 charging hourly rates at that point?

8 A. Yes.

9 Q. And then the successive invoices are all based on
10 your hourly rates?

11 A. Yes.

12 Q. So you described how the first step was assisting
13 the chair and the state staff in constructing a
14 database and that you did that while you were
15 waiting for the Census data.

16 So am I correct that all of that was done
17 prior to mid March 2011?

18 A. Yes.

19 Q. No one compensated you for that work?

20 A. No.

21 Q. What data were you -- what data were you gathering?

22 A. I wasn't gathering the data. The state was
23 gathering the data.

24 Q. What data were they gathering?

25 A. They were gathering the results of past elections

1 and past voter registration.

2 Q. And why did you -- why was it important for them to
3 gather that data?

4 A. It's important because this data -- it's felt this
5 data is required in order to draw lines and make
6 the decisions that need to be made, a standard
7 practice.

8 Q. How did you -- or who made the decision about which
9 past election results the state staff should gather
10 for the database?

11 A. That was the responsibility of the chairman of the
12 committees.

13 Q. So Senator Rucho and Representative Lewis?

14 A. Yes.

15 Q. And did you have any role in advising them as to
16 which elections data they should gather?

17 A. Yes.

18 Q. And what advice did you give them?

19 A. My general advice was to gather everything that
20 could be gathered. There were -- there was not an
21 ongoing process of gathering data specifically for
22 redistricting through the previous decade in
23 North Carolina, and the legislative staff was
24 behind on that process, and they were also -- the
25 data needed to be formatted such that it could be

1 put into a redistricting system and merged with the
2 expected PL 94 Census data, and since the chairmen
3 were unfamiliar with that process, we advised
4 them -- I advised them in that process.

5 Q. Did anyone other than state staff assist in that
6 process?

7 A. I'm sorry. Which process?

8 Q. Of gathering -- we're talking now pre-Census data
9 being released, gathering the election results and
10 voter registration data that you were advising the
11 chairman should be gathered and made part of the
12 state database. And I'm just saying were any other
13 outside consultants, data crunchers, experts, was
14 anyone else involved?

15 A. Okay. I'm clear now. Thank you.

16 We recommended that they hire a person by
17 the name of Ben Friedman who was familiar with this
18 process who worked under the direction of state
19 staff to help them with certain aspects of that
20 database build.

21 Q. And what is Ben Friedman's background or
22 experience?

23 A. His experience then was that he worked for a period
24 of time in the RNC's data IT shop called Strategic
25 Analysis and did similar work there and so was very

1 familiar with that process specifically.

2 Q. And do you know how long Ben Friedman worked with
3 the state staff to compile the database?

4 A. I don't know what the exact dates were, but it was
5 a very brief period of time. It was a single
6 process, single project process, and I'd have to
7 say measured in weeks.

8 Q. Was there anybody else that was involved in this
9 process other than state legislative staff?

10 A. Certainly not that came to my attention that I can
11 recall.

12 MR. FARR: Can we take a break when it's
13 convenient?

14 MS. EARLS: Sure, if I can just finish up
15 general data questions.

16 (WHEREUPON, Exhibit 433 was marked for
17 identification.)

18 BY MS. EARLS:

19 Q. I believe you have in front of you what's been
20 marked as Exhibit 433, and this is a file that was
21 produced to us with the file name that you see at
22 the bottom, "Data Report 1-25-11."

23 Do you recall seeing this document?

24 A. I believe I did, yes.

25 Q. And do you know who Dan Frey is?

1 A. I do.

2 Q. Did you -- was he the principal person on the state
3 staff that you were working with to gather the data
4 as you described it?

5 A. I would not say necessarily gather the data but to
6 merge the databases and work with the various data
7 sets.

8 Q. And does this memo deal with the subject of that
9 work?

10 A. Yes.

11 Q. So you received this memo?

12 A. I believe so, yes.

13 Q. And do you know what he's referring to when he says
14 "in case it might help with discussions in DC, for
15 those of you that are there"?

16 A. I think he's referring to myself and Mr. Oldham and
17 Mr. Wild. I don't think he was quite clear on what
18 our association was at that point, but very
19 helpful, I might add, and competent.

20 Q. Mr. Frey was?

21 A. Yes.

22 Q. That was actually going to be one of my questions
23 was whether to your knowledge -- this memo is kind
24 of a status report on the database building task
25 and he's reporting on the progress with various

1 aspects of that task, and I just wanted to ask you
2 whether his -- whether, to your knowledge, these
3 tasks were done ultimately.

4 A. Yes.

5 I would like to clarify this was not a
6 report to me.

7 Q. Do you know who it was a report to?

8 A. The chairman of the two committees.

9 Q. But to your knowledge the work was done?

10 A. Yes.

11 Q. And it was done adequately?

12 A. Yes.

13 (WHEREUPON, Exhibit 434 was marked for
14 identification.)

15 BY MS. EARLS:

16 Q. Exhibit 434 is a two-page document with the title
17 Remaining Redistricting Preparation Tasks --
18 February 2nd, 2011.

19 Have you seen this document before?

20 A. Yes.

21 Q. And can you tell me what it is.

22 A. I think it's pretty much described by its header.
23 It was the tasks remaining to prepare for
24 redistricting on February 2nd.

25 Q. Did you review this as part of your role in

1 assisting the chairs in setting up the databases
2 they needed?

3 A. Yes.

4 Q. And does this accurately reflect the work that
5 ultimately was done?

6 A. Yes.

7 Q. And to your knowledge, was it done properly?

8 A. It appears so to me and on time, I might add.

9 Q. Very good.

10 MS. EARLS: This is a good place to take a
11 break.

12 (Brief Recess: 10:32 to 10:45 a.m.)

13 BY MS. EARLS:

14 Q. I have a few more questions about this data
15 project. And I want to understand you were merging
16 election returns from the North Carolina -- well,
17 not you personally, but the point of the project
18 was to merge election returns from the
19 North Carolina Board of Elections and voter
20 registration data with the -- eventually with the
21 PL 94-171 Census data; is that correct?

22 A. Yes.

23 Q. And that would allow you when you're drawing --
24 would allow anyone using that database -- and just
25 so I'm clear, in the work that you were doing in

1 North Carolina, were you using Maptitude?

2 A. Yes.

3 Q. And the state legislative system used Maptitude?

4 A. Yes, although a different version thereof.

5 Q. And the Maptitude that you were using, was that
6 on -- was that a personal copy or was that on a
7 computer in some other place?

8 A. It was a stand-alone copy, yes. My computer,
9 essentially.

10 Q. What version of Maptitude were you using? You said
11 it was different from the legislature's.

12 A. The legislative version had been modified to run on
13 the state's system and interface with outside
14 software to do maps and reports and things such as
15 that, but the part of the system that actually did
16 the line drawing was -- the core of it was
17 Maptitude.

18 Q. So the project to merge the election returns and
19 voter registration data with the Census data would
20 allow someone using Maptitude, when they're drawing
21 maps, to determine the voter registration data for
22 the districts that they were drawing; is that
23 correct?

24 A. Yes.

25 Q. And it would allow someone to look at election

1 returns in the district that they were drawing?

2 A. Well, not only for the districts they were drawing,
3 but if you selected a certain area that you wanted
4 to move, you could tell what the characteristics of
5 that work was too.

6 Q. And by characteristics, when we're referring to
7 election returns, you mean specifically what the
8 vote totals were -- whether a primary or general
9 election what the vote totals were for the various
10 candidates?

11 A. And also the demographics, yes.

12 Q. When you say demographics, what are you referring
13 to?

14 A. The Census data.

15 Q. And what data -- what demographic data does the PL
16 94-171 file give?

17 A. It's a breakdown of the racial and ethnic data by
18 all units of Census geography, essentially.

19 Q. And it gives you voting age population as well; is
20 that correct?

21 A. Yes.

22 Q. In this project of being able to merge the data, am
23 I correct that the Census data, as you said, goes
24 to all levels of geography so you have -- down to
25 the Census block you can tell the race and voting

1 age and total population data for every Census
2 block in the state?

3 A. There is a record in the PL 94 data for every piece
4 of geography up and down the whole hierarchy and
5 that would be incorporated in part in the
6 redistricting system.

7 Q. And the smallest level of geography is the Census
8 block level?

9 A. It is.

10 Q. The election data, when you receive it from the
11 Board of Elections, does not go down to the Census
12 block level, does it?

13 A. No.

14 Q. The Board of Elections keeps their election returns
15 by precinct; is that correct?

16 A. They keep it by precinct and I think also by VTD.

17 Q. And what's the difference between precinct and VTD?

18 A. Well, the VTD is a unit which is established in
19 partnership -- in a partnership between the state
20 government and the Census Bureau for the state's
21 convenience to report out demographic data.

22 It's a level of hierarchy which requires
23 the states' participation across the nation to
24 identify those -- the boundaries of those pieces of
25 geography to the Bureau so they can incorporate

1 them into their TIGER system.

2 Q. Does the Maptitude program that you were working
3 with in North Carolina, did that have information
4 about the VTDs in North Carolina as opposed to the
5 precincts?

6 A. In many cases they were synonymous, but, yes, it
7 was VTD level.

8 Q. Do you have any sense of to what degree -- how
9 often or to what extent, rough percentage, across
10 the state of North Carolina where the precincts are
11 different from VTDs?

12 A. No, not specifically, but I know they are in some
13 cases.

14 Q. Isn't it -- and to your knowledge in North Carolina
15 when a VTD is not the same as a precinct, isn't it
16 usually the case that that's because a VTD has been
17 divided into two or more smaller precincts?

18 A. That's my understanding, yes.

19 Q. So when you have Census data down to the block
20 level but you have election returns at the VTD
21 level, if you draw a redistricting plan that's
22 based on VTDs so that you have whole VTDs in every
23 district, then you would be able to tell using the
24 election data what the voters' performance was in
25 the district; is that correct?

1 A. Yes.

2 Q. When you divide a VTD in drawing a redistricting
3 map -- because the Census blocks are smaller than
4 VTDs, right?

5 A. Yes.

6 Q. So it's possible to -- in drawing a district using
7 Maptitude it's possible to divide a VTD and use the
8 Census blocks that make up that VTD?

9 A. Yes.

10 Q. When you divide a VTD, how did you determine what
11 the election results are for that divided VTD?

12 A. Maptitude proportionalizes the election and
13 registration data within the blocks of the VTD.

14 Q. And what does that mean "proportionalizes"? Can
15 you describe that?

16 A. It was the same for the state system as well, for
17 the system that we were using. You disaggregate --
18 is usually the common term of art that's given to
19 the process -- the election history and
20 registration data down to the Census block using
21 some demographic figure. Usually it's the adult
22 voting age population.

23 Q. Just so I understand clearly, by proportionalize,
24 does that mean if I have a VTD that is a thousand
25 people -- and you said voting age population -- so

1 let's say a thousand people 18 or over and you're
2 dividing that VTD and you take 400 of those
3 thousand and they're in one district and 600 are in
4 the other district, your election returns don't
5 tell you anything about the 400 different than the
6 600, you just have election returns for the entire
7 1,000 population in that VTD?

8 A. No. The system will proportionalize the returns,
9 the data, for that VTD in proportion to the adult
10 population on each side of the line.

11 Q. So for both sides -- so for the 400 and the 600,
12 you'll get 40 percent of the -- well, explain how
13 the proportionalize works. I do want to understand
14 it.

15 A. It's a little complex, but I guess in the simplest
16 terms, each element of the registration and
17 election data is multiplied by the percentage that
18 that block's population represents of the entire
19 district population, and then in the process of
20 that, the sums are rounded up or down depending on
21 how you view the disaggregation by -- in one of the
22 units to correct for the rounding errors.

23 Q. So in a sense, it assumes that you are -- that the
24 entire -- that the entire VTD is uniform, by
25 proportionalizing, it's assuming that it's sort

1 of -- the Democrats and Republicans registered in
2 that VTD are uniformly spread throughout the VTD?

3 A. Yes.

4 Q. So using my 1,000 voting age population earlier, if
5 it's 75 percent Republican in that VTD by
6 registration, the 400 would be shown as 75 percent
7 Republican even if in fact all of those Republicans
8 lived in the 600 side of the VTD that's split?

9 A. That's a good example, yes.

10 Q. I want to turn now to the second stage. You said
11 that there was a criteria discussion.

12 Did that happen prior to the Census data
13 being released or after the Census data was
14 released?

15 A. Both.

16 Q. And who were those discussions with?

17 A. We had discussions with the chairman.

18 (WHEREUPON, Exhibit 435 was marked for
19 identification.)

20 BY MS. EARLS:

21 Q. I marked as 435 a copy of your affidavit that was
22 filed earlier in this action. Do you want to take
23 a minute just to make sure -- this is dated
24 January 19, 2012 -- just to make sure that's
25 correct and this is your affidavit.

1 Am I correct that Exhibit 435 is a copy of
2 your affidavit with appendices and exhibits
3 attached?

4 A. It is.

5 Q. And the first exhibit is your resume we were
6 referencing earlier.

7 A. Yes.

8 Q. If you would look at paragraphs 12 to 14 of your
9 affidavit, which begins on page 4, this section is
10 headed Primary Criteria Used to Draw Plans.

11 And is this a summary of the criteria that
12 you followed in drawing the redistricting plans in
13 North Carolina?

14 A. I need to look at it, please.

15 Q. Please do.

16 So my question is: Is this an accurate and
17 complete statement of the criteria that you used in
18 drawing redistricting plans in North Carolina?

19 A. It certainly has the important elements.

20 Q. Did you write the entire affidavit yourself or did
21 someone else draft any parts of it that you then
22 reviewed?

23 A. I drafted the affidavit primarily myself. It was
24 reviewed by counsel.

25 Q. And in particular, paragraphs 12 to 14, did counsel

1 write the first draft of those or did you write
2 those?

3 A. Now I don't rightly remember, to tell you the
4 truth.

5 Q. In here -- in paragraphs 12 through 14 you say
6 that -- I'm looking now at the first sentence of
7 paragraph 12 -- "I was directed by leadership of
8 the General Assembly."

9 Are you referring there to Senator Rucho
10 and Representative Lewis?

11 A. Yes.

12 Q. Is there anyone else you would -- who was involved
13 in directing you as described in that paragraph?

14 A. Not directly, no.

15 Q. Each time you say "I was instructed, I was also
16 instructed," the people doing the instructing were
17 Senator Rucho and Representative Lewis?

18 A. Yes.

19 Q. Did anyone else participate in the -- you know, in
20 providing those instructions to you?

21 A. The instructions came from the chairman of the
22 committees.

23 Q. Were these in writing or orally?

24 A. No.

25 Q. It was oral instructions?

1 A. Yes.

2 Q. And did this occur at a particular meeting or over
3 the course of several meetings?

4 A. The latter.

5 Q. Other than the verbal instructions as you've
6 described them in paragraphs 12 through 14, were
7 there any other sources of information that you
8 received about what criteria you should follow in
9 constructing North Carolina's redistricting plans?

10 A. I was familiar with the Stephenson cases and with
11 the Strickland case and, of course, I've had a lot
12 of experience with the Voting Rights Act, and the
13 primary architecture of the plan, as you might say,
14 was to harmonize the requirements of the Stephenson
15 cases with the Voting Rights Act and taking into
16 account the Strickland case.

17 Q. So do I understand you to say that you were -- in
18 addition to receiving the instructions from the
19 Chairman Rucho and Lewis, you were also applying
20 your own understanding of various cases about
21 redistricting and your years of experience in
22 drawing redistricting plans?

23 A. That was the instruction I received from the
24 chairman. I don't believe at any point we were not
25 in agreement about what those requirements were.

1 Q. Did you receive any advice from anyone else about
2 what the legal criteria are that you should follow?

3 MR. FARR: To the extent that calls for
4 any testimony about what you were told by counsel,
5 I instruct you not to answer the question on the
6 grounds that it's protected by attorney-client
7 privilege and work product.

8 BY MS. EARLS:

9 Q. But I'm not asking you what they told you. I'm
10 just asking you did you receive that advice.

11 A. I had discussions.

12 Q. Who did you have -- and just to be clear, you had
13 discussions in which you received legal advice
14 about what criteria you should follow in drawing
15 North Carolina's redistricting maps?

16 MR. FARR: Objection.

17 Because that explains what the discussions
18 were about, I instruct you not to answer the
19 question.

20 MS. EARLS: Just to be clear, my question is
21 not -- I don't want to know what that advice was. I
22 just want to establish that you had discussions in
23 which you received legal advice.

24 MR. FARR: I'll instruct you not to answer
25 that question.

1 Yes, you can say you received legal advice.

2 THE WITNESS: I received legal advice.

3 BY MS. EARLS:

4 Q. Okay. In the discussions at which you received
5 that advice, who was present?

6 A. Tom Farr was present at some. Mr. Oldham was
7 present at others. I think that's primarily what I
8 can remember.

9 Q. Anyone else in the room when you were discussing
10 these matters with Mr. Farr and Mr. Oldham?

11 A. Well, there were numerous discussions. I don't
12 recall in those types of discussions that we may
13 have had some of those discussions in the presence
14 of one or the other of the chairman of the
15 committees.

16 Q. So Chairman Rucho or Lewis may also have been
17 present?

18 A. Yes.

19 Q. Is there any --

20 A. But I don't really recall which ones or where.

21 Q. Is there anyone else who might have been present?

22 A. Not that I can recall.

23 Q. I want to show you a document that was among the
24 material that you provided but it has also been
25 previously marked in this deposition as Exhibit 46.

1 This is, I believe, from Erika Churchill's
2 deposition.

3 First I want to ask you, Exhibit 46 is the
4 Legislator's Guide to North Carolina Legislative
5 and Congressional Redistricting. Did you see that
6 at any point while you were working on the
7 redistricting plans in North Carolina?

8 A. I did.

9 Q. Did you review it?

10 A. I was asked to review it with regard to technical
11 statements that were made in it.

12 Q. So you actually saw a draft before it was made
13 final?

14 A. Yes.

15 Q. And you reviewed the technical statements?

16 A. I did.

17 Q. And then did you also receive a copy of the final
18 version?

19 A. Yes.

20 Q. And did you review the portions of that guide that
21 talk about the legal standards governing
22 redistricting?

23 A. I did.

24 Q. Did you consider those to be guidance in how you
25 should draw --

1 A. There were certainly -- I read them and had them in
2 mind, yes, but my primary instructions were those
3 that were given to me by the chairman.

4 Q. Well, did the chairman give you instructions that
5 were different from your view than what was in the
6 Legislator's Guide?

7 A. I don't know. I would have to read it in full to
8 know that. It was written by a different set of
9 people, legislative staff, I believe.

10 Q. You'll see there's a tab there and it's marking, I
11 believe, page 4 of the guide where the discussion
12 begins about the Voting Rights Act of 1965.

13 A. Yes.

14 Q. There's a paragraph there on Section 2 of the
15 Voting Rights Act, and I want to draw your
16 attention to that paragraph. And you can take a
17 minute to read it.

18 A. Is that the first paragraph of the section?

19 Q. Yes, the first paragraph.

20 A. (Witness complying.)

21 Q. And I'm not quoting it verbatim, and I will if you
22 need me to, but am I correct that that paragraph
23 asserts that under Section 2 of the Voting Rights
24 Act there's no legal right to strict
25 proportionality for minority voters?

1 MR. FARR: Objection.

2 MS. EARLS: Well, then, I'm sorry, I don't
3 have an extra copy.

4 BY MS. EARLS:

5 Q. Okay. The sentence here that says, "while
6 Section 2 does not establish a right to have
7 members of a protected class elected in numbers
8 equal to their proportion of the population."

9 Did you see this portion of the manual when
10 you were drawing the redistricting plans?

11 A. I read the manual. I was aware of that section of
12 the act. I didn't have it by my side as I was
13 drawing the map, if that's what you mean.

14 Q. And did you disagree with that statement?

15 A. It doesn't matter whether I disagree or don't
16 disagree. It's the law.

17 Q. Well, okay.

18 A. I subscribe to the law.

19 Q. But is that --

20 A. I think that statement speaks for itself, and I
21 don't have -- there's no reason for me to disagree
22 with it, but even if I did it would be irrelevant.

23 Q. Let me ask you about the next page, page 5, where
24 the manual goes through the establishment of a
25 Section 2 violation. And I realize that you

1 testified in the Gingles case so this is probably
2 old news to you, but --

3 A. It's been revised since then.

4 Q. Right. But I want to focus in particular on the
5 part of the Section 2 requirements that recite the
6 totality of the circumstances evidence and
7 that's -- yes, the second half of the page, page 5
8 there.

9 And my question is: In drawing
10 North Carolina's redistricting plans, did you have
11 available to you or were you aware of any data or
12 information relating to the totality of the
13 circumstances evidence? And as you know, it
14 continues onto page 6.

15 A. I believe you presented a statement to that regard
16 to the committee about racial block voting and I
17 saw a report that Mr. Brunell made with regard to
18 that.

19 Q. So other than my statement and Dr. Brunell's report
20 on racial block voting, was there any other
21 information that you had available to you regarding
22 the totality of the circumstances evidence?

23 A. No.

24 Do you want this back now?

25 Q. Well, yes. I have some specific questions about

1 racially polarized voting.

2 Do you understand or believe there to be a
3 difference between statistically significant
4 racially polarized voting and legally significant
5 racially polarized voting?

6 A. Well, first of all, I'm not here to testify about
7 law, but I think that distinction has been made in
8 cases.

9 Q. Well, I believe that you do in your affidavit at
10 some point talk about racially polarized voting,
11 and I just want to ask you -- you said you believe
12 the distinction has been made. What is the
13 distinction?

14 A. I would have to refer back to a specific comment.
15 I'm sorry.

16 Q. Well, my question is just, generally, what's the
17 difference between statistically significant
18 racially polarized voting and legally significant
19 racially polarized voting?

20 A. I think as a general rule, you could have polarized
21 voting in any election if any group has a pattern
22 of voting more strongly for a candidate than
23 another group. That's polarization of the vote.
24 It could be Republican versus Democrat. There's
25 all sorts of polarizations.

1 And the polarization may become an issue in
2 a court case, and if the court case -- the support
3 of the analysis is upheld by the court, then
4 there's legally sufficient.

5 Q. One of the totality of the circumstances factors is
6 the extent to which voting in elections of the
7 state of political subdivisions are racially
8 polarized but also the extent to which members of
9 the minority group in the state or political
10 subdivision bear the effects of discrimination and,
11 in particular, the extent to which members of the
12 minority group have been elected to public office
13 in the jurisdiction.

14 My question to you is what impact on your
15 analysis of whether or not a particular plan might
16 violate Section 2 of the Voting Rights Act, what
17 impact does it have that a candidate of choice of
18 black voters can be elected in a district that's
19 less than 50 percent black after the Strickland
20 decision?

21 MR. FARR: Objection to the form of the
22 question.

23 THE WITNESS: Let's have you repeat that
24 again. I'm sorry.

25 BY MS. EARLS:

1 Q. What impact on the Section 2 analysis -- and by
2 that I mean when you're drawing a district and
3 you're trying to determine whether or not a
4 majority black district is required by Section 2 of
5 the Voting Rights Act, what impact on your analysis
6 does it have if a candidate of choice of black
7 voters has been elected in a district that's less
8 than 50 percent black in voting age population?

9 MR. FARR: Objection to the form of the
10 question.

11 THE WITNESS: I wasn't making an analysis
12 as I was drawing the districts so I can't really
13 answer that question as you posed it.

14 BY MS. EARLS:

15 Q. Well, are you saying that even though one of your
16 instructions was -- and now I'm referring back to
17 your affidavit. And it does say regarding
18 legislative districts under paragraph 12 that you
19 were directed to follow the criteria established by
20 the United States Supreme Court and the
21 North Carolina Supreme Court in Strickland v.
22 Bartlett and then in paragraph 13 regarding
23 Congressional districts you were instructed to
24 comply with the United States Supreme Court's
25 holding in Strickland v. Bartlett.

1 So it's my understanding that you were
2 instructed to comply with those decisions. So in
3 the course of drawing redistricting plans that
4 comply with those decisions, what impact did it
5 have on your assessment that a candidate of choice
6 of black voters was elected in a district less than
7 50 percent black voting age population?

8 MR. FARR: Objection to the form of the
9 question.

10 THE WITNESS: Do you want me to answer?

11 MR. FARR: Yes.

12 THE WITNESS: The way that that
13 conformance was taken care of in the drafting of
14 the plan was the instruction that I was to draw
15 majority-minority districts, so where that was
16 possible I drew them.

17 BY MS. EARLS:

18 Q. So then it was your understanding that Section 2 of
19 the Voting Rights Act as interpreted or explained
20 in those Supreme Court decisions required you to
21 draw a majority black district wherever it was
22 possible?

23 MR. FARR: Objection.

24 THE WITNESS: I was not making a judgment
25 on what was required by Section 2 of the Voting

1 Rights Act with regard to the percentage that the
2 district would be.

3 I was executing the instructions given to
4 me by the chairman of the committee that a minority
5 district needed to be 50 percent plus one in
6 accordance with Strickland to place the legislature
7 in a safe harbor with regard to the Voting Rights
8 Act.

9 Q. But I believe you also said that you drew those
10 wherever it was possible.

11 A. Well, not wherever it was possible. When I drew a
12 district, it would be 50 percent plus one.

13 Q. So are you saying that it was actually possible to
14 draw additional 50 plus one percent black districts
15 in North Carolina in any of the three plans that
16 you did not draw?

17 A. Yes.

18 Q. Which plan -- in which plan is that true?

19 A. The House plan and the Senate plan and actually --
20 well, no.

21 Q. In your view, does Section 2 require the
22 maximization of the black districts in a
23 redistricting plan?

24 MR. FARR: Objection to form.

25 THE WITNESS: I'm sorry. Are you asking

1 that as a general statement or in the context of
2 this plan?

3 MS. EARLS: As a general statement.

4 MR. FARR: Objection to form.

5 THE WITNESS: The section of the Voting
6 Rights Act which you read to me about
7 proportionality would clearly state that in
8 some -- it would come to be that in some states it
9 would be possible to draw more districts than the
10 proportion of the population, in some case it would
11 be less, in some case it would be equal, so it
12 would not be my understanding that the act required
13 maximization.

14 BY MS. EARLS:

15 Q. And in your view does Section 5 of the Voting
16 Rights Act require that?

17 A. Section 5 is about a totally different set of
18 circumstances. Section 5 is in my judgment to
19 preserve Section 5 districts or districts which
20 enter into Section 5 counties in one way or
21 another.

22 Q. Another question about racially polarized voting.

23 In your view, can a white candidate be the
24 candidate of choice of black voters?

25 A. Yes.

1 Q. And are white-versus-white, that is, elections
2 involving two white candidates, are those useful in
3 analyzing racially polarized voting?

4 MR. FARR: Objection to the form.

5 You may answer it.

6 THE WITNESS: I'm sorry. What type of
7 racially -- racially polarized voting, you said?

8 BY MS. EARLS:

9 Q. Yes.

10 A. Probably less helpful.

11 Q. And do you know what I mean by exogenous and
12 endogenous elections?

13 A. Yes.

14 Q. So are endogenous elections more useful than
15 exogenous ones?

16 A. With regard to legislative redistricting?

17 Q. Yes, and with regard to analyzing racially
18 polarized voting.

19 A. Well, they're certainly more helpful in regard to
20 analyzing existing districts in the context of the
21 district that was there when the election took
22 place.

23 Q. And what about analyzing districts that you're
24 drawing as new districts?

25 A. I think when you start shifting districts, so to

1 speak, on the state's landscape so that you have a
2 proportion of one district -- one old district in
3 the new district and a portion of another district
4 in the new district and such as that that it
5 becomes much less a factor because precincts or
6 VTDs, whatever unit you're measuring this in, can
7 behave radically differently as they are moved from
8 one district to another, so it wouldn't be possible
9 to do that on the fly, so to speak.

10 Q. So am I understanding you to say that it's your
11 view that because when a precinct is in a different
12 district, voters behave differently that you can't
13 use past elections to say anything about what
14 racially polarized voting patterns might be in
15 future elections in different districts,
16 differently drawn districts?

17 A. For those of us who draw districts in general, the
18 general rule is that statewide elections are more
19 helpful in predicting future voting behavior than
20 are local and district elections because of what I
21 mentioned before.

22 Q. So, in other words, you don't agree that endogenous
23 elections for state legislative office are more
24 useful than exogenous ones?

25 A. In what way?

1 Q. For analyzing racially polarized voting.

2 A. To what end?

3 Q. To determine whether or not it's necessary to draw
4 a majority black district.

5 A. Okay. As I now understand your question, okay, I
6 think it's valid and necessary to make a
7 polarization analysis of both the existing
8 districts, what I would say the baseline
9 districts -- do you understand?

10 Q. Uh-huh.

11 A. Okay -- and other local elections that may be in
12 areas such as county elections, city elections, a
13 number of those elections, in determining whether
14 or not polarized voting is present in a specific
15 geographic area, and that geographic area would be
16 the area that was covered by the election.

17 So, yes, I agree with you on that question.

18 Q. I also have a couple questions about compactness.

19 What do you understand about the
20 requirement -- or let me ask it this way: Is
21 compactness a consideration in any of the criteria
22 that you used in drawing North Carolina's
23 redistricting plans?

24 A. To some degree, yes.

25 Q. In what way did it play a role?

1 A. For the most part, where it could be done, my
2 practice would be to make lines smoother when it
3 could happen, and that's one degree of compactness.
4 It was not the major criteria because the major
5 criteria were the Voting Rights Act and Strickland
6 and Stephenson and manifested in the county
7 grouping rule.

8 Q. And how did you evaluate compactness when you were
9 drawing the North Carolina plans?

10 A. Well, by sight, S-I-G-H-T.

11 Q. The Maptitude program that you were using had built
12 into it some mathematical measures of compactness;
13 is that right?

14 A. Yes. Seven, I believe.

15 Q. Did you use those at all in assessing the relative
16 compactness of districts?

17 A. No.

18 Q. Did you run any compactness measures at all on any
19 of the plans that you were drawing?

20 A. Before or after enactment?

21 Q. No, before enactment.

22 A. No.

23 Q. Why not?

24 A. Because I was very busy just trying to get the
25 plans done and get them into a form where they

1 could be approved by the chairman and turned into
2 legislation and passed.

3 Q. So by that I take it that you would have done them
4 if you had more time?

5 A. That's a hypothetical. I don't really -- I don't
6 really know.

7 Q. Did you conclude it was not a priority to look at
8 the mathematical measures of compactness?

9 A. Well, remember, compactness is a very vague
10 concept. It's almost a concept in search of a
11 definition and it's also a concept which is
12 different from state to state within the tradition
13 of the state, and being as it was not a major
14 component of the criteria of the redistricting
15 process, I probably wouldn't have done that unless
16 I was instructed to do it. I knew that the state
17 legislative staff had the ability to run those
18 tests and they could be run by them.

19 Q. When you say it was not a major component of the
20 criteria in North Carolina, are you basing that on
21 the instructions you received from the leadership?

22 A. Specifically that it was not a major factor?

23 Q. Yes.

24 A. No.

25 Q. What do you base it on?

1 A. I based it on my judgment as to what they were
2 concerned with and considered in their discussions
3 with me.

4 Q. So did your prior role in redistricting in
5 North Carolina, including analyzing prior
6 Congressional districts for compactness, play any
7 role in your consideration of compactness as a
8 criteria in this round of redistricting?

9 A. Not specifically.

10 Q. Other than the verbal instructions that you had
11 from Senator Rucho and Representative Lewis and the
12 Legislator's Guide, were there any other -- and
13 your own experience and knowledge of the law from
14 your years of engaging in redistricting, are there
15 any other sources that you had for what legal
16 standards should be followed in drawing the
17 redistricting maps in North Carolina?

18 A. Well, as particularly the draft maps were released,
19 the chairman released statements concerning the
20 draft maps which I read and would be checking in my
21 own mind what -- how those -- how the plans were
22 conforming to those statements.

23 Q. Just so we're clear, I'm going to show you what's
24 been marked -- previously marked as Deposition
25 Exhibit 55 and ask you if those are the statements

1 you're referring to.

2 A. Are those the ones with the purple tabs?

3 Q. Well, the entire exhibit is behind tab 55.

4 A. I'm sorry.

5 Q. If you want to take a minute and look through them.

6 A. (Witness complying.)

7 Q. Are those the statements you were just referring
8 to?

9 A. Yes.

10 Q. Did you review those statements prior to them being
11 issued publicly?

12 A. No.

13 Q. Thank you.

14 Was there any other source of criteria or
15 guidance on what standards you should follow in
16 drawing the redistricting plans that you haven't
17 already discussed?

18 A. Not that I can recall.

19 Q. So I think we're ready to turn to the third stage
20 of your involvement which you described as drawing
21 districts and plans and managing -- being a
22 gatekeeper of the process.

23 Going back to your Exhibit 431 which has
24 the date you were in North Carolina, did that stage
25 of the process start when you came on April 13th?

1 A. Yeah, let's repeat that again. I'm sorry.

2 Q. That's all right. I'm trying to establish a
3 timeline for when you started drawing districts and
4 plans and just -- first let me ask you: Did you
5 work on North Carolina redistricting at times other
6 than when you were physically in Raleigh?

7 A. Yes.

8 Q. Where else did you work on the plans?

9 A. Sometimes I worked on them in the RNC office that
10 they provided me as a consultant.

11 Sometimes -- most of the time I worked on them at
12 home. I have a portable computer. Sometimes I
13 worked on the train. Sometimes I worked on the
14 plane. You know, the beauty of having a portable
15 computer is you can work anywhere.

16 Q. Just in terms of proportion, then, is it fair to
17 say that greater than 50 percent or greater than
18 75 percent, what proportion of the time that you
19 actually put in working on drawing districts for
20 North Carolina's redistricting maps was spent doing
21 that outside of North Carolina?

22 A. You know, I couldn't give you an accurate percent
23 because I didn't keep tabs on it at all times, but
24 I would say a majority of the work was done here in
25 Raleigh.

1 Q. Then can you give me some idea of when you started
2 actually drawing the plans.

3 A. Okay. Would it answer your question to say that
4 when the Census data became available and the
5 databases became available from the state
6 legislative staff, I began looking at the maps?

7 Q. And do you recall roughly when that was?

8 A. I believe it was in the last two weeks of March of
9 2011. We were all eagerly awaiting the release of
10 the data.

11 Q. Did you draw them in any particular order? Did you
12 start with the Congressional or start with the
13 House or Senate? How did that process work for
14 you?

15 A. My recollection is is that the House was the first
16 body that I looked at with regard to the data and
17 the information. The House plan is the most
18 complex of the plans. And then the Senate plan and
19 then finally the Congressional maps.

20 Q. When you came to North Carolina on April 13th --
21 this was after the Census data was available and
22 after the database had been built -- did you
23 already have a draft of any of those plans?

24 A. By a draft do you mean a complete map that I would
25 treat as a map that I deliver to the chairman or do

1 you mean a partial map? Or what form do you want
2 to --

3 Q. Why don't I ask you what did you have when you came
4 to Raleigh on April 13th?

5 A. I don't rightly remember exactly what I had, but
6 the way that the process unfolded was -- and was
7 instructed in my understanding of Stephenson is the
8 first mission, so to speak, was to see what
9 minority districts could be drawn in the state, and
10 that was the first task.

11 And at the same time, investigations were
12 going on as to what sort of county groupings could
13 be done.

14 And then, again, as instructed by
15 Stephenson, there's a process of harmonizing the
16 two requirements of the Voting Rights districts and
17 the county groupings, and this begins a rather long
18 and involved and intricate and iterative process
19 between those two branches until at least one full
20 map is present that at least has the minority
21 districts in it and has the groupings established,
22 the most difficult part of the plan being that
23 harmonization.

24 After that, it's really filling in the
25 remaining districts within each county grouping.

1 (WHEREUPON, Exhibit 436 was marked for
2 identification.)

3 BY MS. EARLS:

4 Q. I have marked as Exhibit 436 another document that
5 was provided to us and it wasn't dated, but can you
6 tell me what this is?

7 A. Provided to us?

8 Q. To the plaintiffs in discovery. This was on a disc
9 that was labeled "Hofeller."

10 A. Okay. By me?

11 Q. Counsel provided it.

12 A. Okay, yes. It was a chart which contained the
13 percentage that the -- what we would call the 18
14 plus AP black population on one side of the chart
15 and the 18 plus black only population was of the
16 state's population, the number of seats in each
17 House and what the exact proportionality would be
18 for each chamber of the General Assembly. And
19 since you can't build 10.6 districts, as an
20 example, in this chart, whether you rounded it up
21 or whether you rounded it down.

22 Q. Did you prepare this chart?

23 A. Yes.

24 Q. And did you do that fairly early on in the process
25 of drawing maps?

1 A. As soon as the Census data came out.

2 Q. And did you --

3 A. There's another factor that's, of course, relevant
4 here and that's the citizen voting age population.

5 Q. Did you have citizen voting age population data?

6 A. There was another data set which was available
7 which was the, I believe, 2010 release of the 2009
8 American Community Survey.

9 Are we through with this?

10 Q. Well, you can leave it right there.

11 I want to just pursue a little bit further
12 this citizen voting age population.

13 Did you have that 2009 -- at what level of
14 geography did the 2009 American Community Survey
15 data on citizenship go down to?

16 A. I think for purposes of this discussion, it comes
17 at the state level, the county level, the tract
18 level and the block group level. There are also
19 some records in there for Census county places of
20 certain size.

21 Q. And am I correct that these are estimated numbers,
22 the American Community Survey? It doesn't survey
23 every single person?

24 A. They're estimated from a roughly I think about
25 one-in-eight sample over a period of five years.

1 The ACS was touted to replace the long-form
2 Decennial Census Questionnaire.

3 Q. And the 2009 release, was that the five-year --
4 they also do -- am I correct they also do one-year
5 and three-year samples as well?

6 A. Yes.

7 Q. And does citizen voting age population data you're
8 referring to from the 2009 ACS, that was a
9 five-year sample?

10 A. Yes.

11 Q. Did you have that data on your computer in
12 Maptitude when you were drawing districts?

13 A. No, nor does anybody else.

14 Q. And why is that?

15 A. You really want me to explain that in full?

16 Q. Well, can you give a general summary so people
17 understand.

18 MR. FARR: Only one or two people that
19 know the answer are the two of you.

20 THE WITNESS: When the Justice Department
21 asks the Census Bureau to produce this extraction
22 from the American Community Survey, they didn't ask
23 for enough information to allow it to be taken down
24 to lower levels proportionally.

25 I would advise them differently, but that's

1 not my business.

2 Therefore, it was not possible to put it
3 into a Maptitude system. In Maptitude, you
4 actually have to one way or the other break
5 everything down to the block level or Maptitude
6 can't take it. You have to have all levels of
7 geography.

8 BY MS. EARLS:

9 Q. Did you make any assessment of the reliability of
10 the citizen voting age population data at any level
11 of geography for redistricting purposes?

12 A. Reliability?

13 Q. Right. In other words --

14 A. Well, the records that come in the American
15 Community Survey give a confidence level, an
16 interval, essentially, for each cell that they
17 produce data, each geographic level.

18 Q. In fact, they give you a number and then they give
19 you a range it can be within?

20 A. Yes, and some of them are interesting.

21 Q. And by interesting, you mean they're so large that
22 they are illogical, the range is so large?

23 A. Sometimes the bottom range, for instance, would
24 create a negative number.

25 The reliability increases as the level of

1 geography contains more and more population because
2 the sample size is bigger.

3 The same sort of factor actually was
4 present in the long-count Census data in previous
5 Censuses from long form but no one ever looked at
6 it.

7 Q. Did you use the citizen voting age population from
8 the 2009 American Community Survey in drawing
9 redistricting plans in North Carolina?

10 A. The answer to that question would be no.

11 Q. Okay. So going back to the proportionality chart,
12 as you began this stage of drawing maps for
13 North Carolina -- and I really want to focus first
14 on the initial stages, so the first couple of
15 visits in April, and I want to ask you who else was
16 working with you in drawing maps.

17 A. At that time?

18 Q. Yes, like in April and May.

19 A. It was pretty much me.

20 Q. Okay.

21 A. Joel Raupe, who you are familiar with, was working
22 in Raleigh during that period, too, but in that
23 stage it was really myself.

24 Q. And then at a later point was there anyone else
25 assisting you in preparing maps?

1 A. What do you mean by "assisting"?
2 Q. Working with you to -- actually sitting down at a
3 computer and looking at options for drawing
4 districts.
5 A. By that do I understand that you mean by taking
6 hold of the mouse and actually moving it around and
7 working on Maptitude?
8 Q. Was anyone else working on Maptitude, yes.
9 A. I'm sorry. I'm trying to answer your question.
10 Q. Yes.
11 A. Well, throughout the process, Joel -- Joel worked
12 on maps. John Morgan worked on maps.
13 Q. Anyone else?
14 A. Not that I recall right at the moment.
15 Q. Did you provide this proportionality chart to the
16 team that you described was working on maps?
17 A. I don't know that I provided the chart to them. I
18 think we were all familiar in our discussions with
19 this -- the conclusions of this chart.
20 Q. So you may not have provided them this exact
21 document, but they knew the general numbers that
22 are reflected here?
23 A. That would also be known by the chairman, too.
24 Q. So fairly early on in the process you communicated
25 this information to the chairman about the

1 proportionality for the Senate and the House?

2 A. Yes. I would have been a bad consultant if I
3 hadn't done so.

4 Q. So let's start with the House maps because you
5 started drawing with those.

6 A. What time do you think we can leave?

7 MR. FARR: We can take a short break.

8 THE WITNESS: If I could just have a short
9 break. I'm sorry.

10 MS. EARLS: No. This is fine.

11 (Brief Recess: 11:51 to 12:01 p.m.)

12 BY MS. EARLS:

13 Q. Before the break, you were describing the iterative
14 process of drawing the Voting Rights Act districts
15 and then looking at the clusters and going back and
16 forth about how to harmonize those.

17 Can you -- as you started looking at the
18 House maps, is it right that the first thing you
19 did was figure out where there were concentrations
20 of black population in the state and decide where
21 there should be majority-minority African American
22 districts?

23 A. Yes.

24 Q. And how did you decide what was a Voting Rights Act
25 district?

1 A. Well, that's an interesting term. Voting Rights
2 district means many, many things to many, many
3 different people.

4 I was operating under the Strickland ruling
5 that a minority district is 50 percent plus one
6 voting age population or in some cases it could be
7 AP voting.

8 Q. I agree that term can mean many things to many
9 people. I was using it because the Stephenson
10 decision uses that and says the Voting Rights Act
11 districts should be drawn first.

12 So in complying with and implementing the
13 instructions you received to follow Stephenson,
14 what did you understand Voting Rights Act districts
15 to mean?

16 A. Well, then we're harmonizing Stephenson with
17 Strickland --

18 Q. Right.

19 A. -- with the Voting Rights Act.

20 Q. Yes.

21 A. I was instructed that we were going to build
22 districts at 50.1 or higher.

23 Q. I understand that, but how did you decide -- what
24 did you understand to be Voting Rights Act
25 districts under the cases you've just mentioned,

1 under Stephenson?

2 A. I don't understand how that differs from my answer
3 that I gave you. A district that's more than
4 50 percent, a majority-minority district.

5 Q. Did you consider districts that elected candidates
6 of choice of black voters in Section 5 covered
7 counties to be Voting Rights Act districts?

8 MR. FARR: Objection to form.

9 THE WITNESS: In the plan I was drafting?

10 BY MS. EARLS:

11 Q. No. In looking at the existing plan and where you
12 needed to preserve Voting Rights Act districts
13 under Section 5 of the Voting Rights Act.

14 A. You're talking about the baseline map?

15 Q. Right or benchmark.

16 A. Benchmark. I'm sorry. Certainly I looked at those
17 districts.

18 Q. So it will probably be easier if I look at a map.

19 (WHEREUPON, Exhibit 437 was marked for
20 identification.)

21 BY MS. EARLS:

22 Q. What I marked as Exhibit 437 is a printout, and
23 it's obviously a lot of numbers, a large Excel file
24 on the disc that we were provided that was entitled
25 Hofeller docs and the file name appears at the top,

1 Tom First Cut 20110322.

2 Do you know when this document is?

3 A. It appears to be a printout of pretty much all the
4 data from a plan.

5 Q. And is it true that pages 3 and 4 continue on from
6 1 and 2 and 5 and 6 continue on from 3 and 4?

7 A. So works their way from left to right on a
8 spreadsheet, yeah.

9 Q. Did you use a naming convention in saving your
10 files that would suggest the date of this file is
11 March 22, 2011?

12 A. The name does not necessarily correlate with the
13 date that the map from which the data was produced
14 was that date.

15 It was more correlated to when the plan was
16 first started on the computer. You start a new
17 plan and you give it a name. You can't -- at least
18 I don't know, maybe you know, how to change that
19 name.

20 Q. So the date would be when you started but not
21 necessarily when you finished, finished meaning you
22 had a complete, fully drawn plan?

23 A. No, that I didn't change it any more. Plans
24 evolve.

25 Q. So the date is the date you started, but the data

1 may be from a more evolved or changed version than
2 from what existed on March 22nd?

3 A. Yes, that's a true -- that's true.

4 Q. This is from an Excel file, and we can show you the
5 file. We could not find -- and it appears while
6 it's not sorted that way that this is in fact 120
7 districts, so this would be a House map, and the
8 title suggests also that this was a State House
9 plan; is that true?

10 A. Yes, although I would note that one of the
11 districts is out of deviation range that I can spot
12 right out of the gate.

13 Q. We couldn't find a map that corresponded to this,
14 and my question is whether you recall or if you can
15 help us figure out what map corresponds to this
16 data set.

17 A. You know, I gave you every map that I had on the
18 two computers that had maps, and I really can't say
19 any more.

20 Q. So --

21 A. This has been well over a year and a quarter and I
22 just don't remember. I'm sorry.

23 Q. So this Excel -- just to be clear, this Excel file
24 wasn't something that we created using a block
25 assignment file for a map that you provided. This

1 Excel file was a separate file on the Hofeller docs
2 CD and you're saying that we have every block
3 assignment file for every map that you had, so if
4 we can't match this to any map, then you don't have
5 any maps that it might --

6 A. That's right. I don't even -- I just don't know.
7 I'm sorry.

8 Q. Okay. But it does at least suggest that on
9 March 22nd you had started drawing maps?

10 A. That's what it would suggest.

11 Q. I want to show you what's previously been marked as
12 Exhibit 195 and ask you if you can identify -- I
13 just want to know if you can identify what that
14 exhibit is.

15 MR. FARR: Anita, do you know which
16 deposition that was in?

17 MS. EARLS: Lewis.

18 THE WITNESS: Well, it's a House map of
19 North Carolina labeled April 6.

20 BY MS. EARLS:

21 Q. And "Tom," so does that refer to you?

22 A. I would -- I would assume yes.

23 Q. So is that one of the --

24 A. That's a map that came off my computer.

25 Q. Yes.

1 A. Yes.

2 Q. And is April 6th the date at which you at least had
3 that version of the map?

4 A. April 6th was the date that you -- all I can say
5 that would indicate the date that that particular
6 plan was first entered onto the computer. I can't
7 tell you for certain that that plan didn't evolve
8 further after that date. We already went over
9 that.

10 Q. But so you're saying that the plan that's
11 represented by the data that's attached to this
12 exhibit, to Exhibit 195 --

13 A. Yes.

14 Q. -- and the map of districts that is represented on
15 that map labeled Tom House April 6 may in fact have
16 not been completed until after April 6th?

17 A. Yes.

18 Q. Then I want to show you Exhibit 196.

19 MR. FARR: Is this from Lewis, too?

20 MS. EARLS: Yes.

21 BY MS. EARLS:

22 Q. These are statistics and a map labeled NC House
23 April 22. Do you recognize that?

24 A. Yes. Could I just make a note. I think there are
25 some blue stars there and that's maybe something

1 that you all added to my exhibit.

2 Q. Well, I will say that the map and the statistics we
3 produced from the block assignment file.

4 A. Right.

5 Q. So we both chose what data to show on the
6 attachment as well as the handwritten notes, but it
7 was produced from the block assignment file, map
8 file.

9 A. Right. The chart is not my data.

10 Q. Well, let me --

11 A. It's data produced from the plan that I gave you.
12 I'm not contesting the data. I'm just making it
13 clear that I did not produce this chart or mark it.

14 Q. Correct. Thank you.

15 A. Same with the last map incidentally, Exhibit 195.

16 Q. Right. But since it was a map on the disc of maps
17 that you provided to us, it was a map that you drew
18 during the redistricting process?

19 A. That's correct.

20 Q. And with the same caveats about this data sheet and
21 handwritten notes on it, is Exhibit 197, NC House
22 May 25, also a version of a map that you drew
23 during the redistricting process?

24 A. Yes, with the same proviso that the chart is yours.

25 Q. Well, I want to ask you about those three exhibits.

1 I believe I'm correct that not only do we have
2 block assignment files for them but we had PDFs of
3 the map itself on the data that you -- on the file
4 that you provided.

5 Did you show those maps in PDF form to
6 anyone else while you were working on these plans?

7 A. Not necessarily. When the plan opens up in
8 Maptitude, I felt it would be helpful for you all
9 as part of the discovery to make a picture of the
10 map. You may want to take that block assignment
11 file and present it in a different light, so I
12 wasn't necessarily trying to show anything, but I
13 felt that the PDF was more for your benefit than it
14 was for anybody else's, but it doesn't mean that I
15 necessarily displayed that map or that PDF to
16 anybody else. It's what was on the computer at the
17 time.

18 Do you understand what I said?

19 Q. I do. Thank you.

20 Looking at Exhibits 195, 196 and 197 -- and
21 you can take as much time as you like, but our
22 review suggested that in Exhibit 195, the map
23 labeled April 6, there were 20 districts with a
24 total black voting age population of 50 percent or
25 greater; that in the next version, whenever it was

1 finished -- the date on the paper map says NC
2 House, April 22 -- that had 21 districts with a
3 total black voting age population with greater than
4 50 percent; and the May 25th map, Exhibit 197, had
5 22 districts with the total black voting age
6 population of 50 percent or greater.

7 Does that roughly reflect the progression
8 as you were looking at House options in terms of
9 numbers of majority black districts?

10 A. It would be an example of the iterative process
11 that was going on with the Voting Rights districts
12 and the county groupings and the harmonization
13 thereof, and as a redistricting person works more
14 and more with the state, you want to learn more and
15 more about the state and may find things that one
16 didn't find before.

17 So it's part of that process, ongoing
18 process of trying to figure out what we may then
19 show to the chairman and say here's what we've come
20 up with.

21 Q. And based on the numbers in the proportionality
22 chart, which I think is in front of you as
23 Exhibit 436. If you could look at Exhibit 436 for
24 a moment.

25 A. Oh, proportionality chart.

1 Q. Right. I just want to ask you, it shows there that
2 your House proportionality truncated, that is, a
3 little bit less than exact was 25 and rounded up
4 was 26.

5 So as you were looking at options and
6 possibilities and learning more about what might be
7 possible in the House map, you were trying to get
8 to that number of 26?

9 A. I didn't really have a goal. I was just seeing
10 what was possible to do.

11 The point at which we would settle on the
12 districts was a decision that would be made by the
13 two chairs.

14 Q. Well, I thought that your affidavit indicated that
15 you were instructed to achieve rough
16 proportionality. You say in paragraph 12, "I was
17 instructed to explore the possibility of creating a
18 sufficient number of majority African American
19 districts so that African American voters could
20 have a roughly proportional opportunity to elect a
21 preferred candidate of choice."

22 So weren't you trying to explore the
23 possibility of getting up to 25 or 26 districts in
24 the House that would be 50 percent or one greater
25 in black voting age population?

1 A. Roughly, yes.

2 (WHEREUPON, Exhibit 438 was marked for
3 identification.)

4 BY MS. EARLS:

5 Q. Exhibit 438 is a partial map and statistics that
6 was among the documents provided to us.

7 Do you recognize this map?

8 A. Yes.

9 Q. What is it?

10 A. It's somewhat hard for me to look at it fully
11 because it's not big enough in some areas, but it's
12 another map showing minority districts -- possible
13 minority districts in the House.

14 Q. If it would make it easier, we can pull it up in
15 Maptitude and you can look at it on the computer
16 screen, but I don't know if that will be necessary.

17 A. It depends on what question you ask me.

18 Q. I just wanted you to know that possibility existed.

19 A. Thank you.

20 Q. Can you explain what the labels are, the numbering
21 system and the labels on this map?

22 A. The number that's -- the top number is a district
23 number. The bottom number is a deviation,
24 numerical deviation for ideal district size.

25 Q. And this is -- again, would this have been a map

1 that you were looking at earlier on in the process?

2 A. I think, but I'm not sure. It was maybe a little
3 later in the process than the maps you've already
4 shown me just by the configuration of the districts
5 that are there.

6 Q. And what does the shaded part of the map show?

7 A. The minority districts. You get that by using
8 locking on the Maptitude program.

9 Q. So in preparing this partial map, you were
10 attempting to determine where it was possible to
11 draw majority-minority districts in the state?

12 A. Yes. There were some other districts on it, but
13 they were -- they were just there.

14 Q. Right.

15 (WHEREUPON, Exhibit 439 was marked for
16 identification.)

17 BY MS. EARLS:

18 Q. I've marked as Exhibit 439 another map that was
19 among the maps provided to us, and I understand the
20 same caveat that the data report wasn't something
21 you produced.

22 Do you recognize this exhibit?

23 A. Yes.

24 Q. And can you explain the title, NC Without Odd
25 Minority Districts?

1 A. I mean, basically, this was yet another part of the
2 iterative process that was going on and it was kind
3 of a side line to say, well, could they look better
4 and still fit in this harmonization scheme, and the
5 conclusion was, no. So it's a failed offshoot.

6 By odd -- I'm sorry, you ask your question.

7 Q. Please. I think you're about to answer it.

8 A. You ask the question.

9 Q. What do you mean by odd?

10 A. Less -- more compact.

11 Q. And why was it not possible?

12 A. Because it wouldn't meet the requirements that were
13 given to me by the chairman which were to create
14 majority-minority districts in accordance with
15 Strickland.

16 Q. And by that you mean it didn't create as many
17 majority-minority districts as other maps?

18 A. Well, and they wouldn't fit within the context of
19 the Stephenson county grouping criteria.

20 Q. In what way --

21 A. I don't know that it was ever actually fully -- if
22 I can use the term -- grouped. I think this was
23 just like a one off little process of saying, okay,
24 is there something else possible.

25 Q. But the data does come from the block assignment

1 file and it shows that -- am I right that these 120
2 districts are all within plus or minus five percent
3 deviation?

4 A. Yes.

5 Q. So this was a complete district map?

6 A. If that's your definition of a complete district
7 map, that it has 120 districts within the deviation
8 range. I don't know that it was a complete map in
9 that it harmonized Stephenson with the Voting
10 Rights Act.

11 Q. And can you tell me why it did not harmonize?

12 A. I really can't. There isn't enough information on
13 this map. I would really have to have a map that
14 would have an overlay of the county groupings and
15 look at them to recognize where they were,
16 et cetera.

17 Q. Did you have the capacity in Maptitude to overlay
18 county groupings?

19 A. It wasn't -- it would have been very labor
20 intensive to do it. There was no function that you
21 pressed in Maptitude that said give us the
22 North Carolina -- the outlines of the
23 North Carolina county groups. That was not a
24 Maptitude function.

25 And I also was very cognizant of the fact

1 that the state's computer had that capacity. How
2 they did it, I don't know.

3 Q. But you just said that this -- this option was a
4 failed map and that was a conclusion that you came
5 to during the redistricting process. And I
6 understand --

7 A. Maybe "failed" is the wrong term. It was an
8 experiment. I decided it was not -- it was just
9 not going in any direction that we were instructed
10 to go in so I abandoned it.

11 Q. And I understood you to say that you abandoned it
12 because it didn't comply with the instructions you
13 were given to follow Strickland and the Stephenson
14 Whole County Provision.

15 A. And the Voting Rights Act.

16 Q. And the Voting Rights Act?

17 A. Yes.

18 Q. And I'm trying to understand how you came to that
19 conclusion. If Maptitude -- because you said you
20 can't tell me now looking at it; you need to know
21 the county grouping overlay.

22 When you were working on this map during
23 the redistricting process, you weren't working on
24 the state's computer, right?

25 A. No.

1 Q. So you didn't have the capacity in Maptitude to
2 overlay the county groupings.

3 A. Not as a direct function of Maptitude.

4 Q. So how did you assess the county groupings in that
5 map?

6 A. Well, I had access to mapping charts that had
7 groupings on them.

8 Q. And where did those mapping charts come from?

9 A. Mr. Oldham.

10 Q. And so you took the mapping charts and compared
11 them to this map?

12 A. I would say this: I'm working intensely on this
13 state and particularly on the House plan because
14 it's the most difficult plan, and I have in my mind
15 where things are, which is what you have to do.
16 You have to be an effective line drawer if you're
17 not paying attention.

18 I looked at this and said this isn't going
19 to go anywhere because this isn't where our
20 grouping plan is headed, but I was thinking you
21 wanted me to get more specific about it and I was
22 just saying there isn't enough detail on here for
23 me to get more specific. It's very difficult to
24 trace on a map of this size where the groups are.
25 We'd be here for a long time.

1 Q. Right.

2 A. And I don't think it's really that productive, but
3 that's up to you because you're asking the
4 questions.

5 Q. I do have the county grouping maps which I'd be
6 happy to show you. They've been previously marked
7 as exhibits because I would like to understand why
8 this map without odd minority districts did not
9 work from your point of view.

10 I'm going to show you both Exhibit 401 and
11 402 and let you tell me if these are the county
12 grouping maps -- I'm sorry to move your stuff
13 here -- that Mr. Oldham provided to you that you
14 were just referring to.

15 A. These are the county grouping maps that Mr. Oldham
16 had and provided to you. I didn't see every one of
17 these grouping maps because he may have decided
18 independently that the grouping that was on a
19 specific map was just not going to work. Again,
20 that's part of the iterative process of harmonizing
21 Stephenson and Strickland and the Voting Rights
22 Act.

23 So in my mind, I know you say this is a
24 grouping map, but for me to be able to opine with
25 any accuracy on this map, we would have to have a

1 map such as the maps that the state staff produced
2 which had the outlines of the districts usually
3 colored and an added blue overlay that showed the
4 groupings.

5 Q. Did you have those state-produced maps before any
6 redistricting maps were made public?

7 A. No.

8 Q. So were there some other county grouping maps that
9 you were working from other than --

10 A. No. What there was is what you see except once in
11 a while I might look at one of Mr. Oldham's charts
12 and attempt to put it in a more organized fashion,
13 but I soon gave that up.

14 Q. And in order to make this assessment, am I right
15 that you had to have all of the districts -- you
16 had to have 120 districts drawn?

17 A. Not necessarily, no. You could have -- you could
18 have the county groups, you could have the minority
19 districts, and it wasn't necessary to have filled
20 in the rest of the districts.

21 Q. In this map all of the rest of the districts are
22 filled in.

23 A. Yes, but not necessarily in the context of what
24 would be a final map product delivered to the
25 chairman or presented publicly.

1 In constructing these districts, sometimes
2 I would put in a full 120 districts with the
3 knowledge that the non-minority district lines
4 would be subject to a lot of give and play by
5 members of the House in the chairman's interplay
6 with them; in other words, they would see something
7 and say, "I don't want that."

8 Q. Do you recall when you first showed a map to the
9 chairman, a House map?

10 A. A full House map?

11 Q. Well, let's start with any map.

12 A. I think that in late April, early May we came down
13 to Raleigh and we showed them a minority district
14 map, a map with minority districts on it. It
15 was -- I don't recall whether it was fully
16 districted out for 120 districts, but we told them
17 at the time don't worry about the other districts.

18 One of the problems you have when you give
19 a map to a legislator is they have trouble
20 discriminating between a hypothetical map and a
21 real map.

22 Q. So you made the choice to only show him the
23 majority-minority districts initially?

24 A. I honestly don't remember whether that map had
25 other districts on it or not. I just don't

1 remember at this point.

2 I certainly wouldn't have had any problem
3 with that, but the main goal at that point was to
4 complete that harmonization phase as directed in
5 Stephenson of first doing the examination of the
6 minority districts and then going through the
7 iterative process of harmonizing them with the
8 Stephenson Whole County groupings, and at that
9 point the map became -- it would have been easier
10 to start drawing the rest of the districts. Other
11 than that, you would just be drawing them and you
12 would be redrawing them and you would be redrawing
13 them because they have to be drawn within those
14 groupings.

15 I can tell you right off this was not the
16 final set of groups --

17 Q. Right.

18 A. -- that I can see.

19 Q. And actually, I'm interested in knowing which map
20 was the first full map that you drew and showed to
21 the leadership, but let me show you a few more maps
22 before we get to that. I'll take those two
23 exhibits back.

24 A. Could I get another drink?

25 Q. Please. Help yourself.

1 (WHEREUPON, Exhibit 440 was marked for
2 identification.)

3 BY MS. EARLS:

4 Q. I'm handing you an exhibit that we marked as
5 Exhibit 440, and that consists of three pages of
6 statistics and two maps, one full map and one a
7 partial map. Again, the statistics are -- we
8 printed these out after loading the block
9 assignment file that was on your disc into our
10 system and we also printed out the full map after
11 loading the block assignment file, but the partial
12 map was a PDF that was on the disc, and the title
13 is NC House Less Convolutated.

14 Can you describe for me what this map is.

15 A. I think I'd be going through the same explanation
16 as I went through with your previous exhibit. It
17 was another segment of the analysis of the
18 harmonization of the Stephenson county grouping
19 criteria with the Voting Rights Act and Strickland.

20 Q. And the same labeling conventions apply, so the top
21 number is the district number and the bottom is the
22 population deviation?

23 A. Yes.

24 Q. And the shaded areas are majority-minority
25 districts?

1 A. I don't know that they're majority-minority
2 districts. Let's just say they're minority
3 districts at this point. They're the districts
4 that I wanted to highlight in this particular map.

5 Q. And as with the previous map, this is a map that
6 has 120 districts, at least. I'm asking you about
7 Exhibit 440.

8 A. I know. I was just looking back.

9 Q. Okay. Take your time.

10 A. What exactly is your question?

11 Q. Is this a map that has 120 districts?

12 A. So it appears.

13 Q. And what did you mean by "less convoluted" on the
14 top of this map?

15 A. It was the same explanation as odd. And again, it
16 was another kind of sidebar look at possibilities.
17 You're always looking at possibilities.

18 Now, one of the things that I wish to
19 remark about this and some of the preceding maps is
20 you'll notice that in these maps, Wilson county is
21 a one-county, one-district county group, and that
22 was certainly not going to provide the incumbent in
23 that county with a minority -- a Strickland-based
24 or any based majority-minority district. And one
25 of our goals, too, would be to minimize to the

1 greatest possible extent leaving minority
2 incumbents in non-minority districts or paired --
3 or paired together with other members.

4 I can just tell you this was not -- again,
5 the clustering system was not the final clustering
6 system.

7 Q. But you can determine something about the
8 clustering system by just looking at the map
9 because you could tell me that Wilson was a
10 single-county cluster?

11 A. Well, that's a pretty easy thing to identify.
12 Again, it would be a lot more helpful if these maps
13 were in the format that the state puts them in when
14 they add the county groupings on top. It's a
15 separate line file.

16 Q. But just to be clear, during the redistricting
17 process when you were working on these maps, you
18 weren't using that state system?

19 A. No.

20 Q. The title of both this map and the last --
21 certainly this one less convoluted suggests that it
22 was less convoluted than something. Can you tell
23 me what it was being compared to?

24 A. I think the current, best version of the map that
25 was in existence at the time.

1 Q. And do you know which map that would have been?

2 A. No.

3 Q. I want to look -- can I just finish up with the
4 House?

5 MR. FARR: How long?

6 MS. EARLS: I just want a few more maps.

7 MR. FARR: Okay. Is that okay with you?

8 THE WITNESS: I'm fine.

9 BY MS. EARLS:

10 Q. Exhibit 400 was introduced in the deposition
11 yesterday, and it's entitled NC House HOMP - 2
12 20110525. Do you recognize that map?

13 A. Yes. I first saw it actually yesterday.

14 Q. So this is not a map that you --

15 A. I don't know whether it is or not. It doesn't look
16 that it has a name like I would have put on the
17 map.

18 Q. So you don't know what the name means, the H-O-M-P?

19 A. Actually, I don't.

20 Q. Because we were assured yesterday we could ask you
21 about these maps.

22 A. Okay. Well, you've asked me about the map, and I
23 said I'm not sure that this specific map -- I just
24 don't recall it.

25 Q. I want to show you what previously was marked as

1 Exhibit 406 and ask you if you recognize that map.

2 A. Yes. That's a county cluster map.

3 Q. And did you have that map or had you seen that map
4 while you were working on the redistricting in
5 2011?

6 A. My hunch is that, again, very early in the process
7 I stopped trying to keep up with each different
8 county grouping map that was being produced and
9 make a prettier map of it because I didn't have
10 time.

11 Q. Exhibit 411 is a map titled NC House 16 District
12 Pod. Can you tell us what that map shows?

13 A. I would assume that somewhere in here there is a 16
14 district pod. I don't know if I could pick it out
15 right away. It would take me some time to figure
16 that out.

17 Q. All right.

18 MS. EARLS: All right, we can stop. Thank
19 you.

20 (Lunch Recess: 12:48 to 1:38 p.m.)

21 BY MS. EARLS:

22 Q. Before the break, I was asking you about the first
23 map that you showed to the leadership, the first
24 House redistricting map that you showed to the
25 leadership, and I want to ask you if you remember

1 roughly when that would have been you first showed
2 them a map.

3 A. It would have been sometime close by the date that
4 the first map showing the VRA districts was
5 released, but I'm not sure that all our districts
6 were even finalized at that time. In other words,
7 there was a period between when the VRA map was
8 released and the full map was released, so I don't
9 know exactly what that date was.

10 Q. Well, I believe that it was roughly June 17th when
11 the VRA districts for the House and Senate were
12 released to the public.

13 So are you saying that it was sometime in
14 June that you showed them the -- first showed them
15 a House map?

16 A. A House map?

17 Q. Yes.

18 A. I think it would probably have been more in May
19 sometime.

20 Q. And were you -- was this an in-person meeting?

21 A. Yes.

22 Q. So it would have been one of the times that you
23 were in North Carolina?

24 A. Oh, yes.

25 Q. So your Exhibit 431 suggests that you were here

1 from May 22nd to May 27th, Exhibit 431 in front of
2 you there. You can flip them back over.

3 A. That could have been, although I don't know for
4 sure when it would have been.

5 Q. And at least one of the earlier maps was dated
6 May 25, one of the earlier exhibits of past
7 districts. Can I just look through and find the
8 May 25th map?

9 A. Do you want me to look? You look.

10 Q. Actually, I think I know where it is.

11 What was previously marked in the
12 deposition of Representative Lewis as Exhibit 197
13 has a title of May 25th. Is it possible that that
14 was the first map that you showed the leadership?

15 A. It's possible, but I can't definitely say.

16 Q. How did you show them the map? Was there a hard
17 copy map like that or did they just come in and
18 look at a computer screen?

19 A. Well, sometimes one, sometimes the other. The
20 problem with one of these maps, as you see here, is
21 that they are pretty small and so you can't see
22 where the districts are, so I think it would be
23 more likely we would have printed a larger map and
24 then again they might have wanted to look at
25 specific spots on the map.

1 Q. Do you recall who was present at that meeting where
2 you first showed them a House map?

3 A. No.

4 Q. And did you receive further instructions from the
5 leadership after showing them that map?

6 A. Further instructions between the time I first
7 showed them the map and between the time the full
8 map was shown to the public?

9 Q. No. I'm saying at the meeting where you showed
10 them the map.

11 A. I don't rightly recall.

12 Q. Then between the time that you showed them the map
13 and roughly June 17th when it was shown to the
14 public, did anyone else see any versions of a House
15 map?

16 A. I believe so, yes.

17 Q. Who else saw the map?

18 A. Well, certainly Joel would have seen them and Dale
19 would have seen them and the respective chairmen
20 would have seen them. They were not terribly
21 interested in the other side -- the other chamber's
22 maps. And some limited members would see them.

23 Q. And who were the members who saw the maps?

24 A. Well, Representative Dollar was quite interested in
25 the maps as they were progressing. Obviously much

1 more in Wake county.

2 Q. Then can you tell me what happened with regard to
3 the House maps after the House and Senate maps were
4 released to the public in terms of your involvement
5 in drawing and looking at alternatives?

6 A. You mean specifically?

7 Q. What did you do --

8 A. Well, I mean, there were changes made to the maps
9 clear up until the day before the next version was
10 released. As would be the case in any legislative
11 redistricting, the map is not a static. It goes
12 through revisions, so there were a lot of things
13 that were done, but some of them were minor, some
14 of them were not minor, but I'd have to have the
15 two maps in front of me to tell you what some of
16 the differences were and it's likely I wouldn't
17 even remember them all.

18 Q. I would like to ask you if you met with any other
19 members after the maps were released publicly.

20 A. Yes.

21 Q. And who do you recall meeting with?

22 A. I met with a large number of members who were asked
23 by the chairman or told by the chairman -- since I
24 don't know what he told them exactly -- to come
25 down and look at the maps particularly for their

1 county grouping, and his admonition to them was to
2 come as a group, a grouping group, so to speak, and
3 look at the maps and I could answer any questions
4 they had and they would make comments about the
5 maps.

6 Q. At the time at which the Voting Rights Act
7 districts were made public for the House map, from
8 that time until the maps were enacted, were there
9 any changes made in terms of the county groupings
10 or had you decided on the final county groupings by
11 the time the Voting Rights Act districts were
12 released?

13 A. I believe it's possible there were. Again, I'd
14 have to see the two maps and the grouping maps, but
15 I would not preclude that that happened.

16 Q. You don't remember?

17 A. I don't remember really. I remember through the
18 maps. That's the way I keep it in my mind.

19 Q. Well, let me show you -- I will show you the map
20 that was enacted. I actually don't think that I
21 have here a map, although we could possibly pull --

22 A. Could we go back and have you re-ask the previous
23 question.

24 Q. I wanted to figure out if you had decided on the
25 county groupings by the time the Voting Rights Act

1 districts were first released to the public.

2 A. Between the time the Voting Rights Act was released
3 and the full map was released to the public?

4 Q. No. At the time the -- June 17th roughly when the
5 Voting Rights Act maps were released to the public
6 had you already decided on the county groupings?

7 A. No. Some of them changed.

8 Q. Okay. Thank you.

9 And I will show you the final map. I do
10 have that here so that you have that to refer to.
11 I want to understand what motivated or caused the
12 change in the county groupings after the first VRA
13 House districts were released to the public.

14 A. Could I see the first VRA map also?

15 MS. EARLS: Can you get it off the
16 website?

17 We can show it to you on the computer.

18 MR. KETCHIE: VRA Corrected.

19 MR. FARR: That would be fine.

20 BY MS. EARLS:

21 Q. I'm showing you on our laptop the VRA Corrected
22 districts that are available on the General
23 Assembly website, and you have in front you
24 Lewis-Dollar-Dockham 4 which is also available on
25 the General Assembly website.

1 MS. EARLS: Thank you, Allison.

2 I can also show you a paper copy if that's
3 easier.

4 THE WITNESS: It's certainly safer.

5 BY MS. EARLS:

6 Q. I'm showing you Exhibit 189 from Representative
7 Lewis's deposition, and it's a multi-page exhibit,
8 but the first page I believe are the VRA districts
9 that were released.

10 A. Well, the group in which Beaufort was included
11 would have been shifted because on the VRA
12 Corrected, District 9, I believe -- although I
13 don't know. I really can't read that number. My
14 eyes aren't good enough.

15 The minority district in Pitt County had --
16 was withdrawn from Beaufort and also the
17 Wilson/Pitt group had been established. It wasn't
18 in the original Lewis House VRA.

19 You can observe that the District 21,
20 instead of going down into Pender county was now
21 made up -- instead of being made up of portions of
22 Wayne, Sampson and Pender was now made up of
23 portions of Wayne, Sampson and Duplin. That was a
24 regrouping of those county groups.

25 The district --

1 MR. FARR: Can I help you?

2 THE WITNESS: This district right here --

3 MR. FARR: Is it the pink district?

4 THE WITNESS: It's the pink district.

5 MR. FARR: I think it says District 20 on
6 VRA Corrected.

7 THE WITNESS: District 20 was dissolved,
8 essentially, which also caused a major regrouping
9 of that area.

10 That's all I can spot with the comparison
11 of those maps.

12 BY MS. EARLS:

13 Q. And so starting with the first change you
14 identified, the Beaufort shift, that involved a
15 change in the Pitt county minority district, is
16 that what -- was it a change in the majority-
17 minority district that caused a change in the
18 county grouping?

19 A. Yes.

20 Q. In the Wilson/Pitt change, what was the motivating
21 factor there?

22 A. It was motivated primarily by incumbencies of
23 minority members and not leaving the incumbent --
24 taking the incumbent in Wilson county in a
25 different direction and also being able to reunite

1 the Martin/Edgecombe, two-county group, form
2 another two-county group out of Wilson and Pitt
3 which was more compliant with Stephenson.

4 The -- well, go ahead, I should let you
5 ask your questions.

6 Q. Well, I want to know all of the -- what factors
7 motivated the change so if there's more you need to
8 tell me about, go ahead.

9 A. When the 20th District in Lewis House VRA Corrected
10 was objected to, the chairman made a decision that
11 that district would not be created in the map.

12 Because that district was no longer
13 created, the Stephenson Whole County criteria
14 mandated that a county grouping consisting of
15 Brunswick and New Hanover county would have to be
16 put back together again, and in order to do that
17 and in order to handle the large multi county group
18 to resolve the populations of the districts in
19 Mecklenburg had to be moved and in order to make
20 that work, the combination of Onslow and Duplin had
21 to be replaced with Onslow and Pender and thus a
22 changed 21st District.

23 Q. On the 20th District, do you know what the basis of
24 the objections were that led to the chairman
25 deciding that you would not draw that as a majority

1 black district?

2 A. Not specifically, but they I think were as a result
3 of public hearings or statements made.

4 Q. And do you know anything more about why Chairman
5 Rucho decided not to draw a majority black district
6 in that part of the state?

7 MR. FARR: I think you meant Chairman
8 Lewis.

9 MS. EARLS: I'm sorry, Chairman Lewis.
10 Thank you.

11 THE WITNESS: I would advise that probably
12 you should ask Chairman Lewis that question.

13 BY MS. EARLS:

14 Q. Well --

15 A. I can't speak for what was totally in his mind.

16 Q. What did he tell you?

17 A. "Change it."

18 Q. He didn't give you any other reasons?

19 A. No. He didn't need to give me any more reasons.

20 Q. Right, but he might have.

21 A. He was in charge of the plan.

22 Q. I understand that.

23 And then District 21, are you saying
24 District 21 was changed because it was impacted by
25 the changes in District 20?

1 A. It was -- as it was necessary to recreate the
2 two-county pod of Brunswick and New Hanover, it was
3 necessary to re-shift some of the other clusters,
4 groupings, whatever.

5 This is often the case when you're trying
6 to harmonize the county grouping and Stephenson.
7 Again, with voting rights, you just can't say,
8 well, we'll just do away with this boundary line
9 and all will be well.

10 You have to regroup the county groups to
11 conform to the maximum extent with the requirements
12 of Stephenson, and that's what was happening there.

13 Q. In the county -- in the VRA district map that was
14 first released, that is, Exhibit -- what's the
15 Exhibit Number?

16 A. 189.

17 Q. -- 189, you testified earlier that there were some
18 majority black districts that could have been drawn
19 in the state that were not.

20 Looking at that exhibit, can you tell me
21 where in the state it could have been possible to
22 draw another majority black district that didn't
23 show up in that map?

24 A. I don't believe so.

25 Q. And is that because you don't have -- are you

1 saying you just can't tell or is that --

2 A. I didn't find one.

3 Q. Okay. Thank you.

4 So then Lewis-Dollar-Dockham 4 that was
5 finally enacted, am I right that it has just one
6 less majority black district than the June 17th
7 Voting Rights Act districts map?

8 A. No. I can think of another one.

9 Q. What's the other one?

10 A. You could have made one of the districts in Forsyth
11 county a 50 percent district.

12 Q. A House district?

13 A. Yes.

14 Q. Do you know what draft of any of these maps shows
15 that district?

16 A. There isn't one.

17 Q. So how do you know that it was possible to draw the
18 district?

19 A. Believe me, when you've gone through drafting plans
20 of a county such as Forsyth and looked at the
21 demographics displayed on the screen and you have
22 two districts side by side which are in the 40s,
23 you know if you took the heaviest concentration of
24 one and added it to the other you could draw a
25 district over 50 percent. It would not take long

1 to do that.

2 Q. So you didn't actually draw the district, but based
3 on what you were seeing about the concentrations
4 you believe it's possible?

5 A. You know, I don't know whether or not I did, but if
6 I did, I wouldn't have kept -- there wouldn't have
7 been a map to keep because it would have been drawn
8 and then you would have looked at it and said, yep
9 and you would push the undo button in Maptitude,
10 there's a little thing you can push and it will
11 take you back however many steps you want to go
12 back and since it probably would have only been a
13 two-step process to make those shifts.

14 Q. Why did you decide not to draw that district?

15 A. That was a decision that was made by the chairman.

16 Q. But did you actually show him that district?

17 A. I told him that it could be done.

18 Q. I understand that in the documents you produced
19 there was a map titled Forsyth Experimental, and we
20 have it on the computer. I'm sorry, I don't have a
21 hard copy, but if you looked at that, could you
22 possibly -- can you show it to him?

23 MR. KETCHIE: Yes.

24 THE WITNESS: Do you want me to come over
25 there and look at it over his shoulder?

1 MS. EARLS: That's fine with me.

2 MR. FARR: How about we do it over here.

3 THE WITNESS: Are we finished with this?

4 I'll just move it.

5 Okay, I've looked at it. Could you repeat
6 the question?

7 BY MS. EARLS:

8 Q. Does that map which was one of the maps that was on
9 the disc of documents and maps that we received
10 from you, does that map illustrate the House
11 district in Forsyth county that you believed
12 demonstrates possible drawing of majority black
13 districts in that county?

14 A. If I could rephrase your question to say I knew.

15 Q. Okay.

16 A. No.

17 Q. Okay. All right. Thank you.

18 Other than the -- so I'd like you to take
19 a look again at the enacted map. Other than the
20 possible majority black district in Forsyth county
21 that you say Chairman Lewis directed you not to
22 draw and the majority black District 20 that
23 originally in the first VRA districts was
24 illustrated as a majority black district and was
25 not in the enacted plan, is there any other place

1 where it was possible to draw a majority black
2 district but was not drawn?

3 A. By that you mean an additional district?

4 Q. Right, an additional district.

5 A. Okay. No.

6 Q. Thank you. I think we're done with those.

7 A. Am I going to need this more?

8 Q. Not right now. I'll take it out of your way.

9 Let's talk now about the Senate maps. Can
10 you tell me who was involved in drawing the Senate
11 maps.

12 A. I was involved, Joel Raupe was involved to a
13 certain extent and John Morgan was involved.

14 Q. I'm showing you what's been marked as Exhibit 213.
15 It's a map titled NC Senate April 22.

16 Do you recognize that map?

17 MR. FARR: Which deposition was that in?

18 MS. EARLS: Rucho.

19 THE WITNESS: Yes.

20 BY MS. EARLS:

21 Q. Do you recall when you first drew a map that showed
22 all of the Senate districts?

23 A. No.

24 Q. But is it -- does the April 22nd indicate that that
25 map was at least started on that date?

1 A. It would be close to that timeframe. As I said
2 before, these maps would change but the titles
3 wouldn't change.

4 Q. Well, Exhibit 214 is a map that is titled NC Senate
5 May 13.

6 A. Yes.

7 Q. Do you recognize that map?

8 A. I think so, yes, but I'd have to see a little bit
9 more detail on it, but I think, yes, it is a map I
10 had on my computer.

11 Q. And you started at least the April 22nd map before
12 starting the May 13th map; is that correct?

13 A. I'm not actually sure that that was my map. It
14 quite possibly could have been a map sent to me.

15 Q. From who?

16 A. Well, if it was sent to me, it would have been sent
17 to me by Joel.

18 Q. But does that mean that he drew it?

19 A. Possibly. Again, I'd have to see more specificity
20 to tell you that. Either Joel or John Morgan.

21 Q. This is Exhibit 215. This is a map that's entitled
22 NC Senate May 23, 3NE No SE.

23 Do you recognize that map?

24 A. Yes.

25 Q. Did you draw that map?

1 A. Yes.

2 Q. And what does the title mean?

3 A. It means it's a Senate map where one of the
4 districts that was drawn that went from Wilmington
5 up to the center of the state was not present on
6 that map.

7 Q. And when you say -- that district that you just
8 described, was that a majority black district?

9 A. Yes.

10 Q. And then this Exhibit 216, does that have the
11 district that you just described? It's entitled
12 NC Senate 3 NE with SE black.

13 A. Yes.

14 Q. Do I understand that in the process of drawing the
15 Senate maps there was an effort to find three
16 majority black Senate districts in northeastern
17 North Carolina?

18 A. Yes.

19 Q. And what was motivating that effort?

20 A. That there was sufficient minority population in
21 that area to justify the drawing of three
22 districts.

23 Q. And is it correct that in drawing the Senate
24 districts you went through the same
25 process -- well, just describe for me the process

1 generally that you went threw in drawing the Senate
2 districts.

3 A. It was the same process as I went through drawing
4 the House districts. Do you want it described
5 again?

6 Q. Well, I assume it was -- was it easier for the
7 Senate districts?

8 A. Oh, yes.

9 Q. Do you know when you --

10 A. I'd say easier mechanically, okay.

11 Q. Is there some way in which it wasn't easier?

12 A. All plans that are drawn come into public view,
13 members see them, there are always issues.

14 Q. Do you remember when you first showed the
15 leadership the Senate redistricting plan?

16 A. You mean a Senate redistricting plan?

17 Q. Yes.

18 A. I'm sure that it would have been at the same time
19 that we would have shown a House plan.

20 Q. So it was in that same time period, end of May,
21 that you had a Senate plan to show the leadership?

22 A. A Senate plan, yes.

23 Q. And did that Senate plan that you showed them only
24 have the majority black districts illustrated on
25 it?

1 A. I'm not sure, but it's very possible it could have
2 been filled out with a full complement of
3 districts, but, again, with the knowledge that they
4 were almost placeholders and would be subject to
5 change.

6 Q. And do you know if the pod or clusters changed any
7 after the Senate VRA districts were made public
8 between that time and the final map being drawn and
9 enacted?

10 A. I don't rightly remember at this time. I'd have to
11 look at that map and look at the other map to see.

12 Again, one would have had the same issue
13 with the decision not to proceed forward with
14 what's labeled District 51 because -- it doesn't
15 have an exhibit number on it.

16 MR. FARR: It's this, Tom.

17 THE WITNESS: I'm sorry. On Exhibit 216.
18 When the decision was made not to move forward with
19 that map, the county groupings would have had to
20 have been changed because it would have been
21 necessary to group differently because there would
22 have been no justification for the group that was
23 there because there was no minority district at
24 issue.

25 BY MS. EARLS:

1 Q. I see. I'm sorry, can I look at Exhibit 216 for a
2 minute.

3 And what's the 18 and above all -- any part
4 black percentage for District 51?

5 A. 47.40.

6 Q. So in your view, would that have satisfied the
7 Strickland criteria?

8 A. We would have found a solution that would have been
9 up above 50 percent plus one if we had proceeded
10 forward with this district, so it would be more
11 appropriate to look at the map that was released to
12 the public with that district on it.

13 Q. With -- I'm sorry, with which district?

14 A. With District 51 on it.

15 (Discussion held off the record.)

16 MR. FARR: Anita, if you can't find it, I
17 could stipulate to something.

18 MS. EARLS: Well, he says he wants to look
19 at it. Oh, I think I have it. Yes, I do have it.

20 BY MS. EARLS:

21 Q. I'm showing you what was marked in the deposition
22 of Senator Rucho as Exhibit 199, and those are the
23 Senate VRA districts that were released.

24 A. Okay. I just want to qualify, restate my answer
25 last time that Senator Rucho had already said to

1 remove this district from the map before this
2 public plan was released.

3 Q. And did he tell you why he decided to remove that
4 district from the map?

5 A. Not specifically. He didn't like it. He didn't
6 like the idea of it. It could have been drawn at
7 just barely over 50 percent.

8 Q. And when you say he didn't like it, what didn't he
9 like about it?

10 A. He didn't like the shape of it. He didn't like the
11 politics of it.

12 Q. Were there any other districts in the Senate map
13 that could have been drawn at 50 percent or greater
14 black -- any part black voting age population that
15 were not drawn?

16 A. There could have been a Forsyth/Guilford district
17 drawn over 50 percent.

18 Q. Are you aware of a map that illustrates that
19 possible district?

20 A. I believe I gave you one.

21 Q. Okay. Because we can't identify what you might be
22 referring to, these -- this is a printout of one of
23 the file folders, so this is Hofeller map 3 and it
24 appears to be some Senate maps. Do you mind taking
25 a look and see if you can find the map you're

1 referring to in that.

2 A. First one.

3 Q. Okay. Let's mark that as an exhibit.

4 MR. FARR: Just pull it out.

5 THE WITNESS: I know. I understand that.

6 Do you want me to look through the others?

7 BY MS. EARLS:

8 Q. If you found the one you're referring to, that's
9 good enough for me.

10 A. That's not necessarily the one I was referring to,
11 but it is a map.

12 Do you want the rest back?

13 Q. Yes.

14 (WHEREUPON, Exhibit 441 was marked for
15 identification.)

16 BY MS. EARLS:

17 Q. We've marked the map as Exhibit 441, and can you
18 explain to me what that shows.

19 A. It shows a district primarily based in Forsyth
20 county which goes down into the southwest corner of
21 Guilford county which is, I believe, a
22 majority-minority district.

23 Q. When you say majority-minority, are you saying --
24 are you combining African American population with
25 any other minority population?

1 A. No.

2 Q. So it would be 50 percent or better in any part
3 black voting age population?

4 A. Yes.

5 Q. Anywhere else in the Senate map where you're aware
6 it was possible to draw a 50 percent or above any
7 part black district that was not drawn?

8 A. No.

9 Q. I'm just taking back the ones we previously marked.

10 MR. FARR: That's fine.

11 BY MS. EARLS:

12 Q. I want to talk now about the process for drawing
13 the Congressional maps.

14 Do you recall roughly when you began
15 looking at what district configurations might be
16 possible for the Congressional districts?

17 A. I believe it would have been shortly after the
18 release of the Census data.

19 Q. And we have been trying to identify what the first
20 full Congressional map might have been, so I'm
21 going to show you -- if the reporter can mark that.

22 (WHEREUPON, Exhibit 442 was marked for
23 identification.)

24 BY MS. EARLS:

25 Q. You have in front of you Exhibit 442. This was a

1 map that was titled HOF-CON-2.

2 Do you recognize this map?

3 A. Yes.

4 Q. And is this a Congressional district map that you
5 drew?

6 A. I think -- although I don't know right off, I think
7 this is actually -- it was the existing map. I
8 think I just copied the map that was in existence
9 and renamed it and never really did anything with
10 it.

11 Q. I see. Thank you.

12 (WHEREUPON, Exhibit 443 was marked for
13 identification.)

14 BY MS. EARLS:

15 Q. You have now in front of you what's been marked as
16 Exhibit 443, and this is a map titled NC Congress
17 9-4 Adjusted.

18 Do you recognize this map?

19 A. Yes.

20 Q. Is this a map that you drew?

21 A. It's a map that I adjusted. It was, I believe,
22 given to me by Adam Kincaid from the NRCC. He was
23 assisting the delegation and asked me to look at
24 it. And I said, "Well, I could do a few things to
25 it that would make it a little better and send it

1 back."

2 Q. And what things, if you recall now, did you do that
3 made it a little better?

4 A. I don't recall specifically, but I think there was
5 some city or CCD splits or maybe there was a county
6 line situation. There were just what almost would
7 be considered in the realm of technical
8 corrections.

9 Q. Who was involved in looking at options for drawing
10 Congressional maps in North Carolina?

11 A. Do you mean in drawing them or --

12 Q. Well --

13 A. -- looking at them and making comments?

14 Q. Let's start with drawing them.

15 A. The only people who had Maptitude systems available
16 to them were myself and Joel Raupe and Mr. Oldham
17 had a system.

18 Q. So they were the three people who were actually
19 drawing Congressional maps with you for
20 North Carolina?

21 A. Well, not complete maps. I can tell you this, that
22 the process of drawing the House maps and the
23 Senate maps was much more complicated than drawing
24 a Congressional map. There was much more emphasis
25 placed on that in the early stages of the line

1 drawing down here in Raleigh and my work with the
2 Raleigh people. That's all.

3 Q. This map that is Exhibit 443 that you -- I'm sorry,
4 I'm blanking on who you said you received that
5 from. That was --

6 A. Adam.

7 MR. FARR: Adam Kincaid.

8 BY MS. EARLS:

9 Q. Is there anyone other than Adam Kincaid who sent
10 you maps to examine for North Carolina
11 Congressional districts?

12 A. Not that I can recall right now.

13 Q. And do you understand, again, with Exhibit 443, the
14 9-4 in the title of that map? Does that refer to
15 the partisan balance of the North Carolina
16 Congressional delegation that it was anticipated
17 would result from this map?

18 A. I don't specifically think that it actually
19 represents a 9-4 partisan balance. If you look at
20 the registrations of districts, it's certainly not
21 a 9-4 registration balance, but I guess you would
22 say that the 9 would be districts that Republicans
23 would consider they either had a very good shot at
24 keeping or had a shot at -- fair shot at taking
25 control of.

1 Q. In this 9-4 Adjusted map, if you look at the first
2 page, am I correct that both District 1 and
3 District 12 are just over 50 percent in voting age
4 any part black population?

5 A. Yes.

6 Q. Did that map, the 9-4 Adjusted map, did you show
7 that to any of the leadership in North Carolina?

8 A. I don't believe so. I think there was another map
9 very similar to this that I did show to them.

10 Q. Okay.

11 (WHEREUPON, Exhibit 444 was marked for
12 identification.)

13 BY MS. EARLS:

14 Q. Exhibit 444 is a map entitled NC Congressional
15 Delegation 9-4 May 11.

16 Do you recognize this map?

17 A. I do.

18 Q. And where did this map come from?

19 A. That came from Adam Kincaid.

20 Q. Is it another version of the map in Exhibit 443?

21 A. It depends on how close you want to say it was to
22 the other one to say it's another version or a
23 different version.

24 Q. Do you know why he sent you the second map, the
25 May 11th map?

1 A. This map, along with the map I'm sure you're going
2 to give me next, are two maps which the delegation
3 had desired for the leadership to see down here.

4 Q. When you say the delegation, you mean the
5 Republican delegation?

6 A. Yes. Well, the Republican part of the delegation,
7 yes. And they asked me if I would carry these maps
8 down and show them to the chairman.

9 Q. And the 9-4 designation was their assessment that
10 it would create 9 districts in which Republicans
11 had an opportunity and 4 districts for Democrats?

12 A. Yes, although that's their label.

13 Q. Did you show --

14 A. Remember, they are a campaign committee.

15 Q. Did you show that map to Senator Rucho?

16 A. Yes.

17 Q. And who else was --

18 A. And to Delegate Lewis.

19 MR. FARR: Representative Lewis.

20 THE WITNESS: I'm sorry, I'm in the wrong
21 state.

22 BY MS. EARLS:

23 Q. I'd like to know if they -- if either Senator Rucho
24 or Representative Lewis gave you any feedback about
25 this -- about this map, the 9-4 May 11 map?

1 A. I think what I would say is their reaction was that
2 we're happy to know what the delegation is looking
3 at. We're capable of drawing our own map.

4 Q. Did you look at any data for either the map that's
5 Exhibit 444 or 443 about the compactness of those
6 districts?

7 A. No.

8 Q. Why not?

9 A. Well, these maps were just maps that I was asked to
10 pass on to the chairman down here. And the answer
11 is I was busy and I was -- they speak for
12 themselves.

13 (WHEREUPON, Exhibit 445 was marked for
14 identification.)

15 BY MS. EARLS:

16 Q. Exhibit 445 is a map titled NC 10-3 CD.

17 Do you recognize this map?

18 A. Yes.

19 Q. What is this map?

20 A. This is another map which was generated, I believe,
21 through Mr. Kincaid that I looked at.

22 Q. And the 10 --

23 A. He would send me maps.

24 Q. So this is one he sent you?

25 A. Yes.

1 Q. Do you know if you showed this map to Senator Rucho
2 and Representative Lewis?

3 A. I know I did not.

4 Q. You did not. Okay.

5 And I'm correct that this map also has two
6 majority black districts that is 18 voting age
7 population, any part black over 50 percent,
8 District 1 and District 12?

9 A. That's certainly what the statistics show.

10 (WHEREUPON, Exhibit 446 was marked for
11 identification.)

12 BY MS. EARLS:

13 Q. Exhibit 446 is a map titled NC Congress 10-3
14 Delegation.

15 Do you recognize this map?

16 A. I do.

17 Q. And where did this one come from?

18 A. This was from Mr. Kincaid. It was the accompanying
19 map to Exhibit 444 that was sent down by the
20 delegation to be shown to the two chairmen.

21 Q. And when you say accompanying, you mean they were
22 both sent at the same time?

23 A. Yes.

24 Q. And did you show that map, which is Exhibit 446,
25 did you show that to Senator Rucho and

1 Representative Lewis?

2 A. I did.

3 Q. Did they give you any other response or different
4 response from the first map?

5 A. It was the same response as the other map because
6 they were shown to them at the same time.

7 Q. I have a map that we received that had no --
8 apparently no corresponding block assignment file
9 so we don't have statistics for it. We just have
10 the map.

11 (WHEREUPON, Exhibit 447 was marked for
12 identification.)

13 BY MS. EARLS:

14 Q. Exhibit 447 is a single page, just a map saying
15 Proposed 10-3 Map. Do you recognize --

16 A. I'm not sure that I recognize this map. I don't
17 really know.

18 Q. You were comparing it to Exhibit 446.

19 A. Well, that's the map that's closest in
20 configuration to that map that you've given me so
21 far.

22 Q. So it is fairly close to the -- there are some
23 differences, but it's fairly close to the
24 Exhibit 446? That's the one you were just looking
25 at.

1 A. I know. Yes.

2 Q. But you don't remember seeing it, Exhibit 447?

3 A. I don't remember seeing it, but it's quite possible
4 I did see it. I don't know. It's quite possible
5 it could have come off my computer, but it would
6 be, I think, just another variant of the map that I
7 was looking at.

8 Q. Do you think it's likely that Mr. Kincaid also
9 provided that to you as a map that the --

10 A. I think that's highly likely.

11 Q. Okay. Thank you.

12 When he provided these maps to you, did he
13 send you the block assignment files?

14 A. Usually. I don't know who else he might have sent
15 information to. He was not under my direction so
16 it may have come down through a different method.
17 I don't know.

18 (WHEREUPON, Exhibit 448 was marked for
19 identification.)

20 BY MS. EARLS:

21 Q. Exhibit 448 is a map entitled NC Congress Whole
22 Precinct 1st.

23 Do you recognize this map?

24 A. Yes.

25 Q. And what is this map?

1 A. It is as it's labeled.

2 Q. For the record, would you tell us what it says?

3 A. It's a whole precinct map of a possible 1st
4 District.

5 Q. And the block assignment files that we received
6 produced the statistics that you see as the first
7 page of the exhibit, and although the map has the
8 1st District shaded, the rest of the districts were
9 also drawn in this map and zeroed out for zero
10 deviation.

11 Did you draw this map?

12 A. I think so, yes.

13 Q. And so you were demonstrating that it was possible
14 to draw the 1st Congressional District at
15 52.72 percent any part black, 18 and over
16 population using entirely whole precincts?

17 A. That's what it shows.

18 Q. Okay. Thank you.

19 (WHEREUPON, Exhibit 449 was marked for
20 identification.)

21 BY MS. EARLS:

22 Q. Exhibit 449 is titled NC Congress Residue Analysis.

23 Do you recognize this map?

24 A. Yes.

25 Q. And can you explain to me what this shows?

1 A. I'm not sure I exactly remember at this time. It
2 may have been -- well, I don't know. I don't
3 remember so I'll leave it at that.

4 Q. So you don't know when it says "residue" what it's
5 referring to?

6 A. No. I think I'd have to examine it more in length
7 to do that.

8 Q. Did you take county lines into account in drawing
9 Congressional districts?

10 A. Yes.

11 Q. And why?

12 A. Well, because that's a criteria of drawing the
13 districts.

14 Q. Do you remember when you first -- when it would
15 have been in the process that you first showed the
16 leadership, Senator Rucho and Representative Lewis,
17 a Congressional map that you had drawn instead of
18 the ones that Adam Kincaid drew?

19 A. I think that actually there was some map drawing
20 going on down in Raleigh while I was concentrating
21 on the House map and at a certain point those came
22 to me because part of my job was to be the -- own
23 the computer that had the map on it.

24 It's like having a document and having a
25 master document and other people can go off and

1 experiment and write paragraphs and take out
2 paragraphs, but it all has to come back to the
3 master document. I'm sure you've gone through that
4 when you've written briefs.

5 And so there was, I believe, some looking
6 at Congressional maps that I hadn't drawn.

7 Q. And who would have been doing that?

8 A. Joel would have had those.

9 Q. Well, he would have had them -- because I
10 understand he had a separate computer with
11 Maptitude on it.

12 A. He did.

13 Q. So he would have -- was his function to be a
14 central repository of all the maps that were being
15 looked at?

16 A. No.

17 Q. No. How would you describe what his function was?

18 A. Well, at such point as a map -- what his function
19 was?

20 Q. Yes.

21 A. He did some experimentation with some maps. He
22 held his own group of maps on his computer. He --
23 from time to time members would come to him and
24 look at things.

25 One of his jobs was when a map progressed

1 to kind of a point where we're saying, okay, we
2 need to know what this map does politically, he
3 would -- we would -- I would usually send him a
4 copy of this map and he would extract from the
5 database a set of data and make a spreadsheet which
6 would then be looked at by other people to look at
7 the politics of the map.

8 Q. And what would be on the spreadsheet?

9 A. Well, a little bit of everything, but more
10 political races and there was a computation of a
11 political factor. You would see that if you were
12 watching national news or something like that, R
13 plus 1, R plus 2, D plus 1, et cetera, to try and
14 figure out how the map related to present
15 districts.

16 Q. I want to show you what was previously marked as
17 Exhibit 416 and ask if you recognize that map.

18 A. I do.

19 Q. And what is that map?

20 A. After a discussion with Dale Oldham I drew this.

21 Q. And what does it show? What is it a map of?

22 A. It's a map -- well, it's a hybrid map. It has some
23 of the elements of another Congressional map with
24 modifications to the 1st District, and as you can
25 see from the deviations on the map, it's an

1 incomplete map.

2 Q. Why were you making modifications to the 1st
3 Congressional District in this map?

4 A. To explore different ways it could be drawn.

5 Q. And --

6 A. You can see, though, for instance, it has
7 non-contiguous sections. It's not a completed
8 investigation.

9 Q. What were you trying to do with the 1st
10 Congressional District in looking at this possible
11 alternative?

12 A. To see another way in which it could possibly be
13 drawn.

14 Q. So you can't say anything more specific about we
15 were trying to make it -- make sure that it didn't
16 go into Raleigh or Durham, we were trying to make
17 it be all whole precincts, we were trying to make
18 it embody certain county --

19 A. I don't know what the precinct structure is on this
20 map. I have no idea. And also because of the fact
21 it's not a complete and contiguous map, I really
22 couldn't make a judgment. On the face of it, it
23 speaks to a district that does not go into Raleigh
24 or Durham.

25 Q. And then let me show you Exhibit 417, and that is

1 entitled NC Congress IV Dale May 18.

2 Is that a complete map?

3 A. No. In fact, I don't think it represents anything
4 of any significance. It was one of those spinoff
5 maps that I may have spun off to do some work in
6 but never did it.

7 Q. Okay. This one is titled Dale -- "this one" being
8 Exhibit 418 is titled Dale IV Recovery.

9 Do you recognize that map?

10 A. Yes.

11 Q. What is this map?

12 A. That's a map that explores the possibility of
13 creating a Wake/Durham/Greensboro/Winston-Salem
14 minority district and also a Mecklenburg to Robeson
15 county district much like the district in the Shaw
16 case.

17 Q. Were you able to draw any conclusions about
18 possible options after drawing that map?

19 A. Well, first of all, it was possible to draw the
20 north central district, and secondly, the 12th
21 District, in order to become a majority-minority
22 district, the African Americans would have to be
23 put -- population would have to be combined with
24 the Native American population. You can see it's
25 non-Hispanic white percentage of the 12th District

1 which is -- the south central district is
2 33.64 percent. Do you see that?

3 Q. Yes.

4 A. Okay. Which indicates there's a very strong
5 minority component in that district which is not
6 African American.

7 Q. That district -- am I correct that this map shows
8 14 Congressional districts?

9 A. Again, it's not a complete map so you would -- one
10 would draw probably the 1st District, the 14th
11 District, the 12th District, and in the process of
12 rectifying the populations and all the districts,
13 one district number would dropout and you would
14 rename the 14th District the 13th District or
15 whatever it was.

16 Lots of times when I was experimenting with
17 any plan you would just put something down in the
18 middle of an existing map knowing if it was even a
19 possibility you would have to work it up on another
20 map.

21 Q. And so was it significant to you that on the chart
22 of the data that even though this map happens to
23 have 14 districts in it, the deviation of District
24 14 is only .02 percent?

25 A. Yes.

1 Q. And District 14 is 52 percent voting age population
2 any part black and similarly, it looks -- the
3 district that you were just referring to -- thank
4 you -- the district you were just referring to,
5 this Robeson county to Charlotte district, while it
6 is only 33.64 percent non-Hispanic white voting age
7 population, it's also 36 percent too large, right,
8 or .36 percent too large.

9 A. That means you could probably only improve it.

10 Q. Right. So why didn't you ultimately have a
11 district in that part of the state?

12 A. Because the two chairmen decided they didn't want
13 to do that.

14 Q. And did they tell you why they didn't want to do
15 that?

16 A. They wanted to keep the 12th District in the same
17 general configuration that it was.

18 Q. And Exhibit 419, is that just another version of
19 what we were just looking at basically?

20 A. Yes. I think because it says Recovery 2,
21 sometimes, as I'm sure your map drawers know, you
22 have a problem with Maptitude and you have to go
23 back to go with a block file and there it is.

24 Q. This Exhibit 420 is titled NC Congress Dale Full
25 Orange II. Do you recognize that map?

1 A. Yes.

2 Q. And what does that show?

3 A. That's another -- what does it show? It shows a
4 zero deviation possible plan for a north central
5 African American district that includes all of
6 Orange county.

7 Q. And am I correct that it actually only has 13
8 districts even though the label for that district
9 you just described is 14?

10 A. You know, I think probably when you imported it
11 that it probably shifted the District 14 to 13.

12 Q. For the data?

13 A. Well, there were only 13 districts in the data. It
14 assigned them as it got them.

15 Q. And then Exhibit 421 is another NC Congress IV Dale
16 Full Orange May 24.

17 A. I think that's probably a fuller view of that same
18 plan.

19 Q. Why did these plans have the "Dale" in the title of
20 them?

21 A. Because they were created as a result of a
22 conversation with Dale.

23 MR. PETERS: When you get to a good point
24 if we could take a break.

25 MS. EARLS: Well, we can break now. Go

1 ahead, that's fine.

2 (Brief Recess: 2:55 to 3:09 p.m.)

3 BY MS. EARLS:

4 Q. I wanted to followup on one matter that we were
5 discussing regarding the Exhibits 421 and 420, all
6 of the maps that have the name Dale in them. I
7 believe you testified that the name Dale is there
8 because you drew those after communication from
9 Dale Oldham, and my question to you is was that
10 communication an instruction about a political
11 matter or a legal matter?

12 MR. FARR: If that involves legal matters,
13 Dr. Hofeller, I instruct you not to answer that
14 question.

15 BY MS. EARLS:

16 Q. Well, I'm not asking you to tell me the content of
17 what he said other than to tell me was he talking
18 about political matters or legal matters in asking
19 you to look -- in whatever he said that led you to
20 drawing these maps.

21 A. In my mind it's a legal matter.

22 (WHEREUPON, Exhibit 450 was marked for
23 identification.)

24 BY MS. EARLS:

25 Q. You've been handed an exhibit that's marked number

1 450. This is one of the maps that was on the disc
2 of materials that you provided.

3 Do you recognize what this is? And I can
4 also tell you that the file name was "1st Change."

5 A. I believe it's a 1st Congressional District map. I
6 could probably place it in better context if I
7 could see the whole map.

8 Q. This was -- we didn't have a block assignment file
9 for this document. We just had this as a PDF.

10 A. From me?

11 Q. Yes.

12 A. That seems strange.

13 Q. I can show you the entire -- the enacted 1st
14 Congressional District map if that would be useful.

15 A. You know, I would have to -- I would have to
16 speculate on what this is.

17 Q. Can you tell me what the shading means? There's a
18 Formula Field box kind of in the lower right-hand
19 corner, but we don't get very much of it.

20 Do you recall what the shading was?

21 A. You know, I just don't -- again, it would be
22 difficult for me to say precisely what it is
23 without seeing the entire map.

24 Q. Well, again, I can show you the map that was
25 enacted. This is all that we received.

1 MS. RIGGS: Yes, it was just a PDF.

2 THE WITNESS: It would appear to be -- the
3 shading is a change that would have taken place in
4 the 13th District, but -- and that's pretty much
5 it. That shading may be the entire 13th District
6 in this map, but I can't tell you without seeing
7 the whole thing.

8 BY MS. EARLS:

9 Q. And do the numbers -- are those the number of
10 people in the Census block?

11 A. No. It's the number of the people in the VTD.

12 Q. In the VTD. Thank you.

13 And then what does the color of the
14 different VTDs indicate?

15 A. You know, I don't know for sure without seeing the
16 Formula Field ID box. I mean, if we had the plan,
17 it would show it. Well, not yours, I guess.

18 Q. Is there any way for you to go back and look at
19 your records and determine what block assignment
20 file this might have been dated from?

21 A. Did you write down the name that was associated
22 with this map?

23 Q. First map. In fact --

24 MS. RIGGS: No, that wasn't in there.

25 MR. FARR: What's it called, "1st Change"?

1 MS. RIGGS: Yes. It was just on the
2 Hofeller docs disc, not any of the maps with the
3 block assignment files. Those are on there.

4 THE WITNESS: It may have been another
5 map. It was just done using the layout function in
6 Maptitude to show something.

7 The shading would be -- again, the way you
8 put shading on a map is you select the area that
9 you want to shade as if you were going to make a
10 district shift and you don't make the district
11 shift and you can actually change the color and
12 shading level of that particular selection.

13 BY MS. EARLS:

14 Q. But the colors of the different VTDs -- you know,
15 some are red on this map, some are green, some are
16 yellow, some are orange, some are blue -- that's a
17 layer that you add based on the data set in the
18 Maptitude program; is that right?

19 A. That's a thematic based on some data in the system.

20 Q. And the possible themes depend on what you
21 designate when you're looking at this map?

22 A. You can create a thematic in Maptitude by selecting
23 the level of geography that you want to theme and
24 then either selecting a percentage from the
25 database or you can compute a percentage.

1 Q. And the data could be race data, it could be
2 election data, it could be voter registration data?

3 A. That's correct.

4 Q. And you just sitting here today don't recall what
5 this might show?

6 A. No, and I don't want to speculate.

7 (WHEREUPON, Exhibit 451 was marked for
8 identification.)

9 BY MS. EARLS:

10 Q. Exhibit 451 is another map that was on the
11 documents file. And am I correct that this also
12 shows VTDs and the numbers there are the population
13 of the VTDs?

14 A. That's correct.

15 Q. And this was just labeled Robeson 2.

16 I have a second document that we'll mark as
17 452.

18 (WHEREUPON, Exhibit 452 was marked for
19 identification.)

20 BY MS. EARLS:

21 Q. I believe -- am I correct that Exhibit 452 is a
22 zoom in of the area shown in Exhibit 451?

23 A. Yep.

24 Q. And that it's showing the district boundary between
25 Congressional Districts 7 and 8 in Robeson county?

1 A. It is.

2 Q. Do you know what this -- what the color coding on
3 this map shows?

4 A. I'd have to answer that the same way I answered the
5 question on the previous map.

6 Q. And am I right that this is showing -- Exhibit 451
7 shows the VTDs and when we follow the red border
8 kind of in the upper middle of the map it's cutting
9 across a couple of VTDs, dividing a couple of VTDs
10 or at least --

11 A. Three to be exact.

12 Q. Right. And then the Exhibit 452, does that show
13 the Census block populations?

14 A. Actually, it was just two.

15 Q. Okay, just two.

16 A. It shows the block populations and it shows the
17 exact traverse of the boundary.

18 Q. And do you know why you would have been looking at
19 this particular area of Robeson county between
20 Congressional District 7 and 8?

21 A. That would probably have been a proposed
22 modification to the boundary between the two
23 districts.

24 Q. Do you remember now who was proposing that
25 modification?

1 A. You know, I don't remember for sure who proposed
2 it, but I remember -- I remember looking at it, but
3 I don't remember the details around it. It was not
4 done.

5 (WHEREUPON, Exhibit 453 was marked for
6 identification.)

7 BY MS. EARLS:

8 Q. You're looking at a document that's been marked as
9 Exhibit 453 and the title is NC Data. It was
10 provided to us on the CD with your documents. And
11 the file name included State Released NC Data
12 Discrepancies ABS.

13 Do you know what this is?

14 A. I think this is a document that was produced very
15 early in the redistricting process by Legislative
16 Services. It was a summation of election data
17 comparing the data that was in the state's database
18 against the actual state totals. There was data
19 missing. I think that's something you would be
20 better off to have asked Frey about.

21 Q. Unfortunately, we didn't get it until we got your
22 documents.

23 A. I think you got my documents before you got Frey.
24 Maybe not.

25 Anyway, I think there was some data missing

1 from those elections, and I don't recall
2 specifically what it is, but I think it might have
3 to do with absentee voting or some sort of class of
4 voting. As you well know, none of these databases
5 are perfect, the political databases, and we go
6 with what the state produced.

7 Q. And can you tell from this whether this was --
8 these were election returns or voter registration
9 data?

10 A. Again, I'm speculating, but since this says the
11 election of '08, the general election, presidential
12 and governor, that's what I would infer.

13 Q. Thank you. I have just a couple more questions
14 about maps.

15 Earlier we were talking about the
16 possibility of drawing a majority black district in
17 the Forsyth/Guilford county area, and I believe we
18 showed you on the computer the map that was NC
19 House Forsyth Experimental, and I want to mark -- I
20 now have a hard copy.

21 (WHEREUPON, Exhibit 454 was marked for
22 identification.)

23 BY MS. EARLS:

24 Q. Can you describe what Exhibit 454 is.

25 A. This is a map I've seen before, is it not?

1 Q. You mean it's another -- we've already introduced
2 it as an exhibit?

3 A. Right.

4 Q. I believe this is the one you looked at on the
5 computer earlier.

6 A. Right. Okay. It probably had more to do with the
7 setting of the boundary lines of the non-minority
8 districts in Forsyth county. I don't think it had
9 anything to do with the configuration of the
10 minority districts.

11 Q. Okay. In your affidavit, which is Exhibit
12 Number 435 --

13 A. 435. Okay. I'm sorry.

14 Q. If you look at page 12, paragraph 29, and there you
15 say, "The enacted 2011 House Plan has 23 majority
16 TB" -- does that stand for total black -- "VAP
17 districts."

18 A. Yes.

19 Q. "And a 24th district that is a majority African
20 American citizen voting age district (District
21 71)."

22 I want to ask you whether this document --
23 which will be marked as Exhibit 455.

24 (WHEREUPON, Exhibit 455 was marked for
25 identification.)

1 BY MS. EARLS:

2 Q. This was also among the documents provided to us
3 from your -- on a disc with your name on it, and it
4 says Winston-Salem CVAP ACS Place.

5 Is this the data that you were using to
6 come to the conclusion in paragraph 29 that the
7 District 71 is majority African American citizen
8 voting age?

9 A. This is the raw data, yes.

10 Q. Did you do anything differently with the raw data
11 to be able to come to that conclusion?

12 A. I believe there's a document in the disc that I
13 sent you that has a further rendition of this data.

14 Q. So what did you have to do with this data?

15 A. You have to -- well, okay. This is the ACS data
16 for the city of Winston-Salem which is the area in
17 which that district was built, and if you apply the
18 citizenship percentages to the voting age
19 population that are on this to the data for the
20 district in the same categories, you can make an
21 estimate of what the CVAP for these groups would
22 have been for citizens.

23 And what you find in North Carolina, if you
24 look at the ACS, is that the citizenship rate of
25 the Hispanic population is pretty low, so if you

1 adjust the populations of all these groups to match
2 this, then you come up with new estimated figure of
3 what the CVAP is for the district if you use the
4 same percentages that you gain out of this city
5 level record.

6 Q. So it's that estimation that led you to conclude
7 that it's a majority African American citizen
8 voting age district?

9 A. Yes.

10 (WHEREUPON, Exhibit 456 was marked for
11 identification.)

12 BY MS. EARLS:

13 Q. Exhibit 456 is another map that was provided on the
14 disc of your maps. And do you recognize what this
15 map shows?

16 A. It shows a detail line at the block level between
17 two districts, Congressional districts, Buncombe
18 county.

19 Q. Between Congressional Districts 10 and 11?

20 A. Yes.

21 Q. And because the color coding is by Census block --
22 by color coding, I mean that some areas are yellow,
23 some are orange, some are blue, some are green.
24 Because it is at the block level, am I correct that
25 it has to be some theme based on Census data?

1 A. That's true.

2 Q. Do you know or recall what the theme was showing on
3 this map?

4 A. Again, I'm not sure. I'd have to look at the data
5 for that area.

6 Q. Do you know why you were looking at this particular
7 part of the boundary between Congressional
8 Districts 10 and 11?

9 A. I think it was a proposed change in the boundary of
10 the district and was just showing where that line
11 was probably to show somebody who was interested in
12 the district where that line was exactly.

13 I may also have been bringing it over from
14 a map. As I explained to you before, oftentimes if
15 we're asked to look at a change, we'll cast off
16 from another map and make the change, and then if
17 we decide that we're interested in incorporating
18 that, I would have to print out a detailed block
19 level map so that I could then go re-enter it back
20 into the master controlling map.

21 It wouldn't have been much -- it wouldn't
22 have been of any importance what the shading was in
23 the precincts. It would just have been important
24 where the line was specifically because sometimes I
25 couldn't trust my memory to remember exactly what

1 was done particularly when you were zeroing out on
2 the Congressional district lines.

3 Q. So is it possible that this zoom-in on this part of
4 the boundary between Congressional Districts 10 and
5 11 was done to figure out zeroing out the
6 populations in those districts?

7 A. It's probable that the change that was made was
8 zeroed out on the map that was essentially
9 generated from the master map and this was my
10 effective way of getting the change back onto the
11 master map.

12 It's not -- there's probably a more high
13 tech way to do it, but it probably takes longer, so
14 this would have maybe taken me -- after I did this
15 map probably taken me ten minutes to enter it into
16 the master map. There's a lot of that going on at
17 the last minute.

18 (WHEREUPON, Exhibit 457 was marked for
19 identification.)

20 BY MS. EARLS:

21 Q. Exhibit 457 also shows a boundary and this time in
22 Guilford county, and this appears to be a -- am I
23 correct that this is zooming in and then in the
24 lower right-hand side there's another map that's
25 zoomed out a little bit? Is that how that works?

1 A. It's an inset of a different area of Guilford
2 county.

3 This map was actually created to explore a
4 request that it made by the incumbent -- potential
5 incumbent in House District 60 that he wished to
6 get incorporated in the final map. Very similar in
7 nature to the previous Exhibit Number 456 that you
8 showed me.

9 It was, again, a way of, one, showing him
10 what could be done and, two, keeping a record so
11 that if they decided to go forward with it, the
12 chairman, that I could get it back into the master
13 map.

14 Q. This person was not a legislator?

15 A. Yes.

16 Q. Oh, a current legislator?

17 A. Yes.

18 Q. Who was that?

19 A. My recollection is it was the incumbent whose
20 residence is located in the new H 60.

21 Q. And do you know if the change was ultimately
22 incorporated?

23 A. My recollection is that it wasn't.

24 Q. And by any chance do you know what the shading --
25 different colors on this map indicate?

1 A. Yes. That's a thematic on African American
2 demographics.

3 Q. And what do the different colors indicate about
4 African American demographics?

5 A. The more red the color -- it's a rainbow spectrum
6 shading, and the more red the color the higher the
7 percentage.

8 Q. And looking at this map, Exhibit 457, can you
9 describe -- I know the change wasn't made, but what
10 change was requested?

11 A. No, I don't remember.

12 (WHEREUPON, Exhibit 458 was marked for
13 identification.)

14 BY MS. EARLS:

15 Q. Exhibit 458 is an e-mail, am I correct, that you
16 sent to Joel Raupe in April of 2011?

17 A. Uh-huh.

18 Q. And the map is a black and white copy of what was
19 attached to the e-mail.

20 Is this -- we talked earlier there was an
21 effort to draw three majority black voting age
22 population State Senate districts. Was this one of
23 the first attempts that you had made to try to draw
24 that?

25 A. I was looking at my grammar.

1 Yes.

2 Q. And when you said they are reasonably compact, were
3 you -- had you run any compactness measures?

4 A. No.

5 Q. And when you say reasonably compact, what were you
6 comparing it to?

7 A. I don't think there was anything to which it could
8 be compared at that point.

9 Are you through with this?

10 MR. FARR: That's fine.

11 MS. EARLS: Not entirely.

12 (WHEREUPON, Exhibit 459 was marked for
13 identification.)

14 BY MS. EARLS:

15 Q. Exhibit 459 is another e-mail from you. This is
16 later in the process, June 19th. And I don't have
17 the attachment, but do you recall sending this
18 e-mail?

19 A. Well, I don't have to recall. It was sent by me.

20 Q. When you say "I hope that the issues on the
21 minority districts in the House Plan get resolved,"
22 what were you referring to?

23 A. I don't remember.

24 (WHEREUPON, Exhibit 460 was marked for
25 identification.)

1 BY MS. EARLS:

2 Q. Exhibit 460 is an e-mail from -- it's an e-mail
3 string that starts -- I believe the first e-mail is
4 June 30, 2011, at 5:39 p.m., but you are copied on
5 this e-mail conveying -- I guess one of the
6 attachments is a statement by Rucho and Lewis in
7 support of the 2011 Congressional plan.

8 Do you remember receiving this e-mail?

9 A. I have to look at it a little more here.

10 Q. Sure.

11 A. In the middle of the night.

12 MR. FARR: Has this been marked
13 previously?

14 MS. EARLS: It may have been.

15 MR. FARR: I'm just going to state, again,
16 that this is something we think was improperly
17 produced because it's our position this is a
18 privileged communication to clients.

19 MS. EARLS: Okay.

20 (WHEREUPON, Exhibit 461 was marked for
21 identification.)

22 BY MS. EARLS:

23 Q. Exhibit 461 is another e-mail from Tom Farr to you,
24 and this is in response to an e-mail that you sent
25 to him on May 27th about releasing, and it's quite

1 a chain so if you want a minute to look through it.

2 A. I remember this.

3 Q. Can you describe what this e-mail exchange was
4 about.

5 A. Adam Kincaid, through some source, found out that
6 there was a map, and he on behalf of his clients,
7 which were the Republican members of the House of
8 Representatives from North Carolina, wanted me to
9 send him a copy of this map.

10 Q. And when you say map, you mean a Congressional --

11 A. A Congressional map.

12 And I declined to send it on the basis that
13 it was privileged product and that it was not my
14 job to release maps to other people without the
15 permission of the chairman -- in this case, it
16 would be both chairmen because it was a
17 Congressional map. And there was some fuss about
18 this and that's what this is all about.

19 Q. Was this --

20 A. I was even on the train.

21 Q. Was this before or after Adam Kincaid had sent to
22 you some Congressional maps for you to show to the
23 leadership?

24 A. I don't really remember. I mean, we know generally
25 when they were.

1 Q. I want to ask you about the decision to publicly
2 release the Voting Rights Act districts for the
3 House and Senate maps before the release of the
4 full maps.

5 Who made the decision to release the Voting
6 Rights Act districts first?

7 A. The chairman.

8 Q. And did you provide him any political advice about
9 whether they should be released first or not?

10 A. You know, I didn't presume to give political advice
11 to either chairman on it unless asked and I wasn't
12 asked. I think that would be a question better
13 addressed to them.

14 (WHEREUPON, Exhibit 462 was marked for
15 identification.)

16 BY MS. EARLS:

17 Q. Exhibit 462 is an e-mail from Joel Raupe to you and
18 there's an earlier e-mail from you -- from him to
19 you and then starts with --

20 A. Which we already looked at, I think.

21 MR. FARR: Let her finish her question,
22 Tom.

23 BY MS. EARLS:

24 Q. Well, the first e-mail, Sunday, June 19, 2011, you
25 wrote, second page, "Here is my latest version of

1 the Congressional map." Right, we did look at the
2 first part, that's right. "I hope that the issues
3 on the minority districts in the House Plan get
4 resolved."

5 But what we didn't have on the first one
6 was Mr. Raupe's responses to you. And then the
7 June 20th -- so I apologize, it's a repeat because
8 it's a string, but what --

9 A. No need.

10 Q. In this instance what I want to ask about now is
11 your question to him, "How is the map being
12 received in the African American community" and
13 then his response.

14 And my question is: Did you believe or was
15 there an attempt to release the Voting Rights Act
16 districts first with the hope that they would be
17 supported by the African American community in the
18 county?

19 MR. FARR: Objection.

20 You can answer the question.

21 THE WITNESS: Okay. Ask it again, please.

22 BY MS. EARLS:

23 Q. Did you believe it was a good idea -- whether you
24 gave advice or not, did you believe it was a good
25 idea to release the Voting Rights Act districts

1 first with the hope that they would be supported by
2 the African American community in North Carolina?

3 MR. FARR: Objection.

4 Go ahead.

5 THE WITNESS: No.

6 BY MS. EARLS:

7 Q. So why were you asking about how the map was being
8 received in the African American community?

9 A. Well, I was curious about what the reaction may
10 have been.

11 Q. And did you think that reaction might make a
12 difference in terms of how you continued your work
13 drawing redistricting maps?

14 A. Actually, to the extent that the chairman decided
15 as a result of this to change anything, it would
16 change some parts of the map, yes.

17 Q. I want to now move to the final part of your -- the
18 initial four areas that you outlined of your work
19 in North Carolina and that's when you had been
20 retained to serve as an expert witness.

21 And in that connection let's turn back to
22 your first affidavit that I believe is Exhibit 435.
23 And I first want to make sure -- we've been told
24 that you are designated as an expert in demography,
25 redistricting and voting behavior.

1 Is that your understanding in terms of what
2 you are serving as an expert in for the purposes of
3 this litigation?

4 A. I think my expertise is a little more limited in
5 this -- in the context of this particular case.

6 Q. How would you describe your area of expertise in
7 this case?

8 A. I'm looking at the examination of the districts and
9 was particularly interested in this affidavit of
10 reacting to the affidavits that have been submitted
11 by some of your experts.

12 Q. In that case, let me ask you about a couple more
13 maps.

14 (WHEREUPON, Exhibit 463 was marked for
15 identification.)

16 BY MS. EARLS:

17 Q. I think it's just not in the same order but it's
18 the same thing. Exhibit 463 is a document
19 contained on the General Assembly's redistricting
20 website and it's a map and statistics for the
21 Martin House Fair and Legal Plan.

22 Did you see that plan back when it was
23 first made public during the redistricting process?

24 A. As I believe it came in at the very tale end of the
25 process.

1 Q. But did you see it when it did come in?

2 A. Yes, I believe when it was first released either on
3 the floor or came out of the system kind of
4 simultaneously.

5 Q. And did you do any analysis of this map at that
6 time?

7 A. Before the enactment of the state's plan?

8 Q. Right.

9 A. The only analysis that I actually did was to look
10 at the county grouping structure of the map.

11 Q. Okay. So did you look at any information about the
12 number of majority black districts in this map?

13 A. Not prior to passage.

14 Q. Then am I correct that all of the work that you did
15 analyzing this map after passage of the
16 redistricting map for the House is reflected in
17 either your first or second affidavits that have
18 been submitted?

19 A. Yes.

20 (WHEREUPON, Exhibit 464 was marked for
21 identification.)

22 BY MS. EARLS:

23 Q. Exhibit 464 is a copy of a map on the General
24 Assembly's redistricting website that shows a map
25 and statistics for the Senate Fair and Legal Plan,

1 and I want to ask you the same questions as with
2 the House.

3 Did you see this map at the time it was
4 made public during the redistricting process?

5 A. I did.

6 Q. And did you perform any analysis of the map at that
7 time?

8 A. The only analysis that I performed was to look at
9 the county grouping structure prior to passage.

10 Q. And then the work that you did in connection with
11 this map post enactment is contained in your first
12 and second affidavits filed in this case?

13 A. Yes.

14 MR. FARR: Do you want a break?

15 THE WITNESS: Is it convenient for me to
16 take a break now?

17 MS. EARLS: That would be fine.

18 (Brief Recess: 3:55 to 4:10 p.m.)

19 MS. EARLS: In light of the hour of the
20 day and the fact that we know we will not conclude,
21 I'm correct that all counsel agree to suspend the
22 deposition --

23 MR. PETERS: Recess.

24 MR. FARR: Recess.

25 MS. EARLS: -- to recess the deposition to

1 reconvene at a mutually convenient time to work out
2 given our witness's schedule and counsel's
3 schedule. Thank you.

4 [SIGNATURE RESERVED]

5 [DEPOSITION CONCLUDED AT 4:11 P.M.]

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1 A C K N O W L E D G E M E N T O F D E P O N E N T

2

3 I, Thomas Hofeller, Ph.D., declare under the
4 penalties of perjury under the State of North
5 Carolina that I have read the foregoing 177 pages,
6 which contain a correct transcription of answers made
7 by me to the questions therein recorded, with the
8 exception(s) and/or addition(s) reflected on the
9 correction sheet attached hereto, if any.

10 Signed this the day of , 2012.

11

12

13

THOMAS HOFELLER, Ph.D.

14

15

16 State of:

17 County of:

18 Subscribed and sworn to before me

19 this day of , 2012.

20

21

22

23

Notary Public

24 My commission expires:

25

1 E R R A T A S H E E T

2 Case Name: NAACP vs. State or North Carolina, et al. and

3 Margaret Dickson et al. vs. Robert Rucho, et al.

4 Witness Name: Thomas Hofeller, Ph.D.

5 Deposition Date: June 28, 2012

6

7 Page/Line Reads Should Read

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23 ____/____|_____|_____

24

25 Signature

Date

1 STATE OF NORTH CAROLINA)
2 COUNTY OF WAKE) C E R T I F I C A T E

3
4 I, DENISE L. MYERS, Court Reporter and
5 Notary Public, the officer before whom the foregoing
6 proceeding was conducted, do hereby certify that the
7 witness(es) whose testimony appears in the foregoing
8 proceeding were duly sworn by me; that the testimony
9 of said witness(es) were taken by me to the best of
10 my ability and thereafter transcribed under my
11 supervision; and that the foregoing pages, inclusive,
12 constitute a true and accurate transcription of the
13 testimony of the witness(es).

14 I do further certify that I am neither
15 counsel for, related to, nor employed by any of the
16 parties to this action, and further, that I am not a
17 relative or employee of any attorney or counsel
18 employed by the parties thereof, nor financially or
19 otherwise interested in the outcome of said action.
20 This the 6th day of July 2012.

21
22
23
24 Denise L. Myers
My commission expires 9/14/2013
25